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E-filing

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JUL 10 2008

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CV 08

3336 RMW
HRL

ROBERT ACHESON, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

G.A.L.A., INC., a Delaware corporation;
GIORGIO ARMANI CORPORATION, a New
York corporation; PRESIDIO
INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.

INDEX OF EXHIBITS IN SUPPORT
OF NOTICE OF REMOVAL OF CIVIL
ACTION TO THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
CALIFORNIA

[28 U.S.C. Section 1332, 1441 and 1446;
Class Action Fairness Act]

(Filed in conjunction with Notice of
Removal)

DEFENDANT PRESIDIO INTERNATIONAL INC., ("PRESIDIO") submits the
following exhibits in support of the Notice of Removal of this action to the United States District
Court for the Northern District of California:

1. Exhibit A is a true and correct copy of the complaint filed in this action on November 21,
2007.

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2. Exhibit B is a true and correct copy of the Civil Case Cover Sheet, Civil Lawsuit Notice, and Summons on Complaint filed on November 21, 2007 and the Proof of Service of Summons and Complaint.
3. Exhibit C is a true and correct copy of the Answer filed by PRESIDIO on January 11, 2008.
4. Exhibit D is a true and Correct copy of the Stipulation, Order to Allow Filing of First Amended Complaint and First Amended Complaint filed in this action on June 30, 2008.
5. Exhibit E is a true and correct copy of the dismissal of G.A.L.A. Inc. and Giorgio Armani Corp. served by Plaintiff on January 23, 2008.
6. Exhibit F is a true and correct copy of the case management conference statement served by Plaintiff on March 28, 2008.
7. Exhibit G is a true and correct copy of the Stipulation and Proposed Protective Order served by Plaintiff on March 26, 2008.
8. Exhibit H is a true and correct copy of the Notice of Motion to Compel Further Responses to Special Interrogatories, Set One, Points and Authorities in Support of Motion to Compel Further Responses to Special Interrogatories, Set One, Separate Statement In Support of Motion to Compel Further Responses to Special Interrogatories, Set One Declaration of Linh Hua in Support of Motion to Compel Further Responses to Special Interrogatories, Set One and the Proposed Order Granting the Motion to Compel Further Responses to Special Interrogatories, Set One served by Plaintiff on April 22, 2008.
9. Exhibit I is a true and correct copy of Plaintiff's Response to PRESIDIO's Request for Statement of Damages served by Plaintiff on May 23, 2008.
10. Exhibit J is a true and correct copy of Plaintiff's Notice of Intent to Appear at Hearing on Motion to Compel Further Responses to Special Interrogatories, Set One via telephone served by Plaintiff on May 28, 2008.
11. Exhibit K is a true and correct copy of Plaintiff's Notice of Intent to Appear at Continued Case Management Conference via telephone served by Plaintiff on June 11, 2008.

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- 1 12. Exhibit L is a true and correct copy of the Stipulation and Proposed Order allowing filing
2 of First Amended Complaint and Proposed First Amended Complaint served by Plaintiff
3 on June 27, 2008.
- 4 13. Exhibit M is a true and correct copy of the Notice of Further Case Management
5 Conference served by Plaintiff on June 30, 2008.
- 6 14. Exhibit N is a true and correct copy of the Plaintiff's Notice of Intent to Appear By
7 Telephone For Continued Hearing on Motion to Compel Special Interrogatories, Set One
8 served by Plaintiff on July 9, 2008.
- 9 15. Exhibit O is a true and correct copy of Presidio's Answer to Plaintiff's First Amended
10 Unverified Class Action Complaint filed on July 9, 2008.
- 11 16. Exhibit P is a true and correct copy of the Notice to Adverse Parties of Removal to
12 Federal Court.

13
14 JACKSON LEWIS LLP

15
16 Dated: July 10, 2008

17 By: 

18 JoAnna L. Brooks
19 Timothy C. Travelstead
20 Attorneys for Defendant
21 PRESIDIO INTERNATIONAL, INC.
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CERTIFICATE OF SERVICE

CASE: Robert Acheson v. Presidio International, Inc., et al.
CASE NO.:

I, Marianne Solano, declare that I am employed with the law firm of Jackson, Lewis, whose address is 199 Fremont Street, 10th Floor, San Francisco, California, 94105; I am over the age of eighteen (18) years and am not a party to this action.

On July 10, 2008, I served the attached document(s): **INDEX OF EXHIBITS IN SUPPORT OF ACTION TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA** in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Linh Hua
Marc Primo
Rebecca Labat
Monica Balderrama
Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
Los Angeles, CA 90067
Telephone: 310.556.5637
Facsimile: 310.861.9051

☒ **BY MAIL:** United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above address within 24 hours by overnight delivery service.

☐ **BY FACSIMILE:** I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 10, 2008, at San Francisco, California.


Marianne Solano

1 Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
3 Robert Byrnes (SBN 200761)
4 Initiative Legal Group LLP
5 1800 Century Park East, 2nd Floor
6 Los Angeles, California 90067
7 Telephone: (310) 556-5637
8 Facsimile: (310) 861-9051

9 Attorneys for Plaintiff ROBERT ACHESON

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ROBERT ACHESON, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

G.A.L.A., INC., a Delaware corporation;
GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case Number: **107 CV 099461**

CLASS ACTION COMPLAINT

(1) Violation of California Labor Code §§ 510
and 1198 (Unpaid Overtime);

(2) Violation of California Labor Code §§ 201
and 202 (Wages Not Paid Upon Termination);

(3) Violation of California Labor Code § 204
(Failure to Pay Wages);

(4) Violation of California Labor Code
§ 226.7(a) (Denial of Rest Periods);

(5) Violation of California Labor Code § 226(a)
(Improper Wage Statements); and

(6) Violation of California Business &
Professions Code §§ 17200, et seq.

Jury Trial Demanded

Plaintiff, individually and on behalf of all other members of the public similarly situated,

alleges as follows:

BY FAX

1 **JURISDICTION AND VENUE**

2 1) This class action is brought pursuant to California Code of Civil Procedure § 382. The
3 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
4 Superior Court and will be established according to proof at trial. The amount in controversy for
5 each class representative, including claims for compensatory damages and pro rata share of
6 attorneys' fees, is less than \$75,000.

7 2) This Court has jurisdiction over this action pursuant to the California Constitution, Article
8 VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those given by
9 statute to other courts." The statutes under which this action is brought do not specify any other
10 basis for jurisdiction.

11 3) This Court has jurisdiction over all Defendants because, upon information and belief, each
12 party is either a citizen of California, has sufficient minimum contacts in California, or otherwise
13 intentionally avails itself of the California market so as to render the exercise of jurisdiction over it
14 by the California courts consistent with traditional notions of fair play and substantial justice.

15 4) Venue is proper in this Court because, upon information and belief, one or more of the
16 named Defendants reside, transact business, or have offices in this county and the acts and
17 omissions alleged herein took place in this county.

18 **THE PARTIES**

19 5) Plaintiff ROBERT ACHESON (hereinafter "Acheson" or "Plaintiff") is a resident of Santa
20 Clara County in the State of California.

21 6) Defendant G.A.L.A., INC. was and is, upon information and belief, a Delaware
22 corporation doing business in California, and at all times hereinafter mentioned, an employer
23 whose employees are engaged throughout this county, the State of California, or the various states
24 of the United States of America.

25 7) Defendant GIORGIO ARMANI CORPORATION was and is, upon information and
26 belief, a New York corporation doing business in California, and at all times hereinafter
27 mentioned, an employer whose employees are engaged throughout this county, the State of
28 California, or the various states of the United States of America.

1 8) Defendant PRESIDIO INTERNATIONAL, INC. was and is, upon information and belief,
2 a Delaware corporation doing business in California, and at all times hereinafter mentioned, an
3 employer whose employees are engaged throughout this county, the State of California, or the
4 various states of the United States of America.

5 9) Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
6 fictitious names DOES 1-10, but prays for leave to amend and serve such fictitiously named
7 Defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities
8 become known.

9 10) Plaintiff is informed and believes, and thereon alleges, that DOES 1-10 are the partners,
10 agents, owners, shareholders, managers or employees of G.A.L.A., INC., GIORGIO ARMANI
11 CORPORATION and/or PRESIDIO INTERNATIONAL, INC., and were acting on behalf of
12 G.A.L.A., INC., GIORGIO ARMANI CORPORATION and/or PRESIDIO INTERNATIONAL,
13 INC.

14 11) Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
15 omissions alleged herein was performed by, or is attributable to G.A.L.A., INC., GIORGIO
16 ARMANI CORPORATION and/or PRESIDIO INTERNATIONAL, INC. and DOES 1-10
17 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on
18 the other's behalf. The acts of any and all Defendants were in accordance with, and represent the
19 official policy of, Defendants.

20 12) At all times herein mentioned, Defendants, and each of them, ratified each and every act or
21 omission complained of herein. At all times herein mentioned, Defendants, and each of them,
22 aided and abetted the acts and omissions of each and all the other Defendants in proximately
23 causing the damages herein alleged.

24 13) Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in
25 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
26 occurrences, and transactions alleged herein.

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CLASS ACTION ALLEGATIONS

14) Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

15) All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

16) The proposed class is comprised of and defined as:

All non-exempt or hourly paid employees who have been employed by Defendants in the State of California within four years prior to the filing of this complaint until resolution of this lawsuit.

17) There is a well defined community of interest in the litigation and the class is easily ascertainable:

a. Numerosity: The members of the class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time, however, the class is estimated to be greater than one-hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.

b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members' as demonstrated herein.

c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys and the proposed class counsel are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this litigation, will continue to incur, substantial costs and expenses in the prosecution of this action for the substantial benefit of each class member.

1 d. Superiority: The nature of this action makes the use of class action adjudication
2 superior to other methods. Class action will achieve economies of time, effort and expense as
3 compared to separate lawsuits, and will avoid inconsistent outcomes because the same issues can
4 be adjudicated in the same manner and at the same time for the entire class.

5 e. Public Policy Considerations: Employers of the state violate employment and labor
6 laws every day. Current employees are often afraid to assert their rights out of fear of direct or
7 indirect retaliation. Former employees are fearful of bringing actions because they believe their
8 former employers may damage their future endeavors through negative references and/or other
9 means. Class actions provide the class members who are not named in the complaint with a type
10 of anonymity that allows for the vindication of their rights at the same time as their privacy is
11 protected.

12 18) There are common questions of law and fact as to the class (and each subclass, if any) that
13 predominate over questions affecting only individual members, including but not limited to:

14 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
15 accordance with the California Labor Code, was willful;

16 b. Whether Defendants required Plaintiff and the other class members to work over
17 eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and
18 failed to pay legally required overtime compensation to Plaintiff and the other class members;

19 c. Whether Defendants failed to promptly pay all wages due to Plaintiff and the other
20 class members upon their discharge or resignation;

21 d. Whether Defendants deprived Plaintiff and the other class members of rest periods
22 or required Plaintiff and the class members to work during rest periods without compensation;

23 e. Whether Defendants complied with wage reporting as required by the California
24 Labor Code, including but not limited to section 226;

25 f. Whether Defendants' conduct was willful or reckless;

26 g. Whether Defendants engaged in unfair business practices in violation of California

27 Business and Professions Code §§ 16200, 16201 and

28 h. The appropriate amount of damages, restitution, or monetary penalties resulting

1 from Defendants' violations of California law.

2 **GENERAL ALLEGATIONS**

3 19) At all times set forth, Defendants employed Plaintiff and other persons as non-exempt or
4 hourly paid employees.

5 20) Defendants employed Plaintiff as an "Associate Manager," which is a non-exempt or
6 hourly paid position, from on or about June 2007 to on or about September 2007, at Santa Clara,
7 California business locations.

8 21) Defendants continue to employ non-exempt or hourly paid employees within California.

9 22) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
10 Defendants were advised by skilled lawyers and other professionals, employees and advisors
11 knowledgeable about California labor and wage law, employment and personnel practices, and
12 about the requirements of California law.

13 23) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
14 have known that Plaintiff and other members of the class were entitled to receive certain wages for
15 overtime compensation and that they were not receiving certain wages for overtime compensation.

16 24) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
17 have known that Plaintiff and other class members were entitled to receive all the wages owed to
18 them upon discharge.

19 25) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
20 have known that Plaintiff and other class members were entitled to receive complete and accurate
21 wage statements in accordance with California law.

22 26) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
23 have known that Plaintiff and other class members were entitled to receive all rest periods or
24 payment of one hour of pay at Plaintiff's and class members' regular rate of pay when a rest
25 period was missed.

26 27) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
27
28 members of the class, and that Defendants had the financial ability to pay such compensation, but

1 willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiff and other
2 members of the class that they were properly denied wages, all in order to increase Defendants'
3 profits.

4 28) California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall limit
5 the right of any wage claimant to "sue directly...for any wages or penalty due him [or her] under
6 this article."

7 **FIRST CAUSE OF ACTION**

8 **Violation of California Labor Code §§ 510 and 1198**

9 **(Against all Defendants)**

10 29) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
11 allegations set out in paragraphs 1 through 28.

12 30) California Labor Code § 1198 and the applicable Industrial Welfare Commission ("IWC")
13 Wage Order provide that it is unlawful to employ persons without compensating them at a rate of
14 pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
15 number of hours worked by the person on a daily or weekly basis.

16 31) Specifically, the applicable IWC Wage Order provides that Defendants are and were
17 required to pay Plaintiff and the other class members employed by Defendants, and working more
18 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-
19 one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in
20 a workweek.

21 32) The applicable IWC Wage Order further provides that Defendants are and were required to
22 pay Plaintiff and the other class members employed by Defendants, and working more than twelve
23 (12) hours in a day, overtime compensation at a rate of two times their regular rate of pay.

24 33) California Labor Code § 510 codifies the right to overtime compensation at one-and-one-
25 half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty
26 (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to

28 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

1 34) During the relevant time period, Plaintiff and the other class members consistently worked
2 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, or in excess of forty
3 (40) hours in a week.

4 35) During the relevant time period, Defendants willfully failed to pay all overtime wages
5 owed to Plaintiff and the other class members.

6 36) During the relevant time period, Plaintiff and the other class members regularly received
7 incentives in the form of bonuses which were not incorporated in Plaintiff's and the other class
8 members' overtime compensation.

9 37) Defendants' failure to pay Plaintiff and the other class members the unpaid balance of
10 overtime compensation, as required by California laws, violates the provisions of California Labor
11 Code §§ 510 and 1198, and is therefore unlawful.

12 38) Pursuant to California Labor Code § 1194, Plaintiff and other class members are entitled to
13 recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

14 **SECOND CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 201 and 202**

16 **(Against all Defendants)**

17 39) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
18 allegations set out in paragraphs 1 through 38.

19 40) At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an
20 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
21 and payable immediately, and that if an employee voluntarily leaves his or her employment, his or
22 her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless
23 the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in
24 which case the employee is entitled to his or her wages at the time of quitting.

25 41) During the relevant time period, Defendants willfully failed to pay Plaintiff and the other
26 class members who are no longer employed by Defendants their wages, earned and unpaid, either

27 and/or the wages earned and unpaid at the time of discharge.

28 42) Defendants' failure to pay Plaintiff and those class members who are no longer employed

1 by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
2 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and
3 202.

4 43) California Labor Code § 203 provides that if an employer willfully fails to pay wages
5 owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a
6 penalty from the due date, and at the same rate until paid or until an action is commenced; but the
7 wages shall not continue for more than thirty (30) days.

8 44) Plaintiff and the other class members are entitled to recover from Defendants the statutory
9 penalty for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day
10 maximum pursuant to California Labor Code § 203.

11 **THIRD CAUSE OF ACTION**

12 **Violation of California Labor Code § 204**

13 **(Against all Defendants)**

14 45) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
15 allegations set out in paragraphs 1 through 44.

16 46) California Labor Code § 204 provides that all wages earned by any person in any
17 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
18 wages due upon termination of an employee, are due and payable between the 16th and the 26th
19 day of the month during which the labor was performed.

20 47) California Labor Code § 204 provides that all wages earned by any person in any
21 employment between the 16th and the last day, inclusive, of any calendar month, other than those
22 wages due upon termination of an employee, are due and payable between the 1st and the 10th day
23 of the following month.

24 48) California Labor Code § 204 provides that all wages earned for labor in excess of the
25 normal work period shall be paid no later than the payday for the next regular payroll period.

26 49) During the relevant time period, Defendants willfully failed to pay Plaintiff and the other

28 California Labor Code § 204.

1 50) Plaintiff and the other class members are entitled to recover all statutory penalties and
2 remedies available for violations of California Labor Code § 204.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of California Labor Code §§ 226.7(a)**

5 **(Against all Defendants)**

6 51) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
7 allegations set out in paragraphs 1 through 50.

8 52) At all times herein set forth, the California IWC Order and California Labor Code §
9 226.7(a) were applicable to Plaintiff's and other class members' employment by Defendants.

10 53) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer
11 shall require an employee to work during any rest period mandated by an applicable order of the
12 California IWC.

13 54) During the relevant time period, Defendants required Plaintiff and other members of the
14 class to work in excess of four (4) hours without providing a ten (10) minute rest period.

15 55) During the relevant time period, Defendants required Plaintiff and other members of the
16 class to work an additional four (4) hours without providing a second ten (10) minute rest period.

17 56) During the relevant time period, Defendants willfully required Plaintiff and other members
18 of the class to work during rest periods and failed to compensate Plaintiff and members of the
19 class for work performed during rest periods.

20 57) Defendants' conduct violates applicable IWC Wage Orders and California Labor Code §
21 226.7(a).

22 58) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are
23 entitled to recover from Defendants one additional hour of pay at the employees' regular rate of
24 compensation for each work day that the rest period was not provided.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 226(a)**

3 **(Against all Defendants)**

4 59) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
5 allegations set out in paragraphs 1 through 58.

6 60) Defendants have intentionally and willfully failed to provide employees with complete and
7 accurate wage statements that fully comply with California Labor Code § 226(a) requirements.

8 61) As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the
9 other class members have suffered injury and damage to their statutorily-protected rights.

10 62) Specifically, Plaintiff and the other class members have been injured by Defendants'
11 intentional violation of California Labor Code § 226(a) because they were denied both their legal
12 right to receive, and their protected interest in receiving, accurate, itemized wage statements under
13 California Labor Code § 226(a).

14 63) Plaintiff and the other class members are entitled to recover from Defendants the greater of
15 their actual damages caused by Defendants' failure to comply with California Labor Code §
16 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

17 64) Plaintiff and the other class members are also entitled to an award of costs and reasonable
18 attorneys' fees pursuant to California Labor Code § 226(e).

19 65) Plaintiff and the other class members are also entitled to injunctive relief to ensure
20 compliance with this section, pursuant to California Labor Code § 226(g).

21 **SIXTH CAUSE OF ACTION**

22 **Violation of California Business & Professions Code §§ 17200, et seq.**

23 **(Against all Defendants)**

24 66) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
25 allegations set out in paragraphs 1 through 65.

26 67) Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair,

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28 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code

1 of Civil Procedure § 1021.5.

2 68) Defendants' activities as alleged herein are violations of California law, and constitute
3 unlawful business acts and practices in violation of California Business & Professions Code §§
4 17200, et seq.

5 69) A violation of California Business & Professions Code §§ 17200, et seq. may be
6 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
7 practice of requiring non-exempt or hourly paid employees, including Plaintiff and class members,
8 to work overtime without paying them proper compensation violates California Labor Code §§
9 510 and 1198. Additionally, Defendants' policy and practice of requiring non-exempt or hourly
10 employees, including Plaintiff and class members, to work through their rest periods without
11 paying them proper compensation violates California Labor Code §§ 226.7(a) and 512(a).
12 Defendants' policy and practice of failing to pay Plaintiff and those class members who are no
13 longer employed by Defendants their wages earned and unpaid at the time of discharge, or within
14 seventy-two hours of their leaving Defendants' employ, is a violation of California Labor Code §§
15 201 and 202.

16 70) Plaintiff and the putative class members have been personally aggrieved by Defendants'
17 unlawful business acts and practices alleged herein by the loss of money or property.

18 71) Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and the
19 putative class members are entitled to restitution of the wages withheld and retained by
20 Defendants during a period that commences four years prior to the filing of this complaint; a
21 permanent injunction requiring Defendants to pay all outstanding wages due to class members; an
22 award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
23 applicable laws; and an award of costs.

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1 REQUEST FOR JURY TRIAL

2 Plaintiff requests a trial by jury.

3 PRAYER FOR RELIEF

4 Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment
5 against Defendants, jointly and severally, as follows:

6 Class Certification

- 7 1. That this action be certified as a class action;
8 2. That Plaintiff be appointed as the representative of the Class; and
9 3. That counsel for Plaintiff be appointed as Class Counsel.

10 As to the First Cause of Action

- 11 1. For general unpaid wages at overtime wage rates and such general and special damages as
12 may be appropriate;
13 2. For pre-judgment interest on any unpaid overtime compensation commencing from the
14 date such amounts were due;
15 3. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
16 Labor Code § 1194(a); and
17 4. For such other and further relief as the Court may deem equitable and appropriate.

18 As to the Second Cause of Action

- 19 1. For all actual, consequential and incidental losses and damages, according to proof;
20 2. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other
21 class members who have left Defendants' employ;
22 3. For reasonable attorneys' fees and for costs of suit incurred herein; and
23 4. For such other and further relief as the Court may deem equitable and appropriate.

24 As to the Third Cause of Action

- 25 1. For all actual, consequential and incidental losses and damages, according to proof;
26 2. For statutory penalties pursuant to California Labor Code § 204 for Plaintiff and all other
28 3. For pre-judgment interest on any untimely paid compensation, from the date such amounts

1 were due;

2 4. For reasonable attorneys' fees and costs of suit incurred herein; and

3 5. For such other and further relief as the Court may deem equitable and appropriate.

4 As to the Fourth Cause of Action

5 1. For all actual, consequential, and incidental losses and damages, according to proof;

6 2. For wages pursuant to California Labor Code § 226.7(b);

7 3. For reasonable attorneys' fees and costs of suit incurred herein; and

8 4. For such other and further relief as the Court may deem equitable and appropriate.

9 As to the Fifth Cause of Action

10 1. For all actual, consequential and incidental losses and damages, according to proof;

11 2. For statutory penalties pursuant to California Labor Code § 226(e);

12 3. For injunctive relief to ensure compliance with this section, pursuant to California Labor
13 Code § 226(g);

14 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
15 Labor Code § 226(e); and

16 5. For such other and further relief as the Court may deem equitable and appropriate.

17 As to the Sixth Cause of Action

18 1. For restitution of unpaid wages to all class members and prejudgment interest from the day
19 such amounts were due and payable;

20 2. For the appointment of a receiver to receive, manage and distribute any and all funds
21 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
22 result of violations of California Business & Professions Code §§ 17200 et seq.;

23 3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code
24 of Civil Procedure § 1021.5;

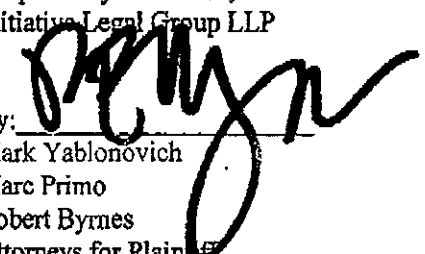
25 4. For injunctive relief to ensure compliance with this section, pursuant to California
26 Business & Professions Code §§ 17200, et seq.; and

28 \\\

1 5. For such other and further relief as the Court may deem equitable and appropriate.

2
3 Dated: November 21, 2007

Respectfully submitted,
Initiative Legal Group LLP

4
5 By: 
6 Mark Yablonovich
7 Marc Primo
8 Robert Byrnes
9 Attorneys for Plaintiff

11/21/2007 TUE 14:14 FAX 310 951 Initiative Legal Group

0019/025

11/21/2007 WED 13:06 FAX 310 951 Initiative Legal Group

0019/020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and e-mail) Mark Primo, Esq. (SBN 216796), Robert E. Brynes, Esq. (SBN 200761) Initiative Legal Group LLP 1800 Century Park East, 2nd Floor Los Angeles, CA 90012 TELEPHONE NO: 310.556.5637 FAX NO: 310.861.9051 ATTORNEY FOR: Robert Acheson		FOR COURT USE ONLY ENDORSED FILED NOV 21 07 KIRI TORRES CHIEF EXEC. OFFICER/CLERK SUPERIOR COURT OF CA COUNTY OF SANTA CLARA DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First St. MAILING ADDRESS: CITY AND ZIP CODE: San Jose, CA 95113-1090 BRANCH NAME:		
CASE NAME: Acheson vs. G.A.L.A., INC. et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 107CV099461 JUDGE: DEPT:

Items 1-8 below must be completed (see Instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Also (22) <input type="checkbox"/> Uninsured motorist (40) <input type="checkbox"/> Other PUPD/WO (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (46) <input type="checkbox"/> Other PUPD/WO (23) <input type="checkbox"/> Non-PUPD/WO (Other) Tort <input type="checkbox"/> Business tort/unfair business practices (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (10) <input type="checkbox"/> Intellectual property (16) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPD/WO tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 9.740 collections (06) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition for appointment award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (23) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (37) <input type="checkbox"/> Other complaints (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	---	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **6 (Six)**

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **November 21, 2007**
 Robert E. Brynes

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except in claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 Caseid Form July 1, 2007

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 3.210, 3.220, 3.400-3.403, 3.740
 Cal. Standards of Judicial Administration, rule 3.10
 www.courtinfo.org

Acheson Legal, Inc.
 www.AchesonLegal.com

BY FAX

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check only one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other PIPD/WO (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (43) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PIPD/WO (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PIPD/WO (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PIPD/WO Non-PIP/WO (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PIP/WO Tort (35) Employment Wrongful Termination (36) Other Employment (15)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex) Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Lato Claim Other Civil Petition
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CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER:

ATTACHMENT CV-5012
107 CV 099461**READ THIS ENTIRE FORM**

PLAINTIFFS (the person(s) suing): Within 60 days after filing the lawsuit, you must serve each defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANTS (The person(s) being sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, in the Clerk's Office of the Court, within 30 days of the date the *Summons* and *Complaint* were served on you;
2. You must send a copy of your written response to the plaintiff; and
3. You must attend the first Case Management Conference.

Warning: If you do not do these three things, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court (CRC) and the Santa Clara County Superior Court Local Civil Rules and use proper forms. You can get legal information, view the rules and get forms, free of charge, from the Self-Service Center at 89 Notre Dame Avenue, San Jose (408-882-2900 x-2926), or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rules.htm>
- Rose Printing: 408-293-8177 or becky@rose-printing.com (there is a charge for forms)

For other local legal information, visit the Court's Self-Service website www.sccselfservice.org and select "Civil."

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone -- see Local Civil Rule 8.

Your Case Management Judge is: Kevin McKenney Department: 16

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: _____ Time: 2:15pm in Department 16

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: APR 15 2008 Time: _____ in Department _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

Arbitration is a normally informal process in which the neutral (the arbitrator) decides the dispute after hearing the evidence and arguments of the parties. The parties can agree to binding or non-binding arbitration. Binding arbitration is designed to give the parties a resolution of their dispute when they cannot agree by themselves or with a mediator. If the arbitration is non-binding, any party can reject the arbitrator's decision and request a trial.

Arbitration may be appropriate when:

- < The action is for personal injury, property damage, or breach of contract
- < Only monetary damages are sought
- < Witness testimony, under oath, is desired
- < An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Neutral evaluation is an informal process in which a neutral party (the evaluator) reviews the case with counsel and gives a non-binding assessment of the strengths and weaknesses on each side and the likely outcome. The neutral can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- < The parties are far apart in their view of the law or value of the case
- < The case involves a technical issue in which the evaluator has expertise
- < Case planning assistance would be helpful and would save legal fees and costs
- < The parties are interested in an injunction, consent decree, or other form of equitable relief

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; and sports, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, for information about ADR procedures, or for other questions about ADR?

Coniaan
Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2704

ALTERNATIVE DISPUTE RESOLUTION INFORMATION SHEET/ CIVIL DIVISION

11/21/2007 WED 13:36 FAX 310 861 9051 Initiative Legal Group

0002/002

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**G.A.L.A., INC., a Delaware corporation; GIORGIO ARMANI CORPORATION,
a New York corporation; PRESIDIO INTERNATIONAL, INC.,
a Delaware Corporation; and DOES 1 through 10, inclusive,**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):****ROBERT ACHESON**, individually, and on behalf of other members of
the general public similarly situated,

SUM-100

FOR COURT USE ONLY
TENDERED
FILED

NOV 21 07

KIRI TORRE
CHIEF EXEC. OFFICER/CLERK
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp/), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp/), or by contacting your local court or county bar association.

Tienes 30 días de calendario después de que te entreguen este edicto y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto y cosas que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/) o puede hacer un contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):
Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113-1090

CASE NO. CV 099461

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Marc Primo, Esq. (SBN 216796); Robert E. Brynes (SBN 200761) Initiative Legal Group LLP
1800 Century Park East, 2nd Floor, Los Angeles, CA 90067 Phone: 310.556.5633 Case No. 08-19051

DATE:

(Fecha)

NOV 21 2007

Click by _____, Deputy

(For proof of service, use Proof of Service of Summons form POS-010.)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)**NOTICE TO THE PERSON SERVED: You are served**

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

**PRESIDIO INTERNATIONAL, INC.,
A DELAWARE CORPORATION**

- under: ☒ CCP 418.10 (corporation) ☐ CCP 418.60 (minor)
☐ CCP 418.20 (defunct corporation) ☐ CCP 418.70 (conservatee)
☐ CCP 418.40 (association or partnership) ☐ CCP 418.90 (authorized person)
☐ other (specify):

- ☐ by personal delivery on (date):

Form Adopted for Mandatory Use
Judicial Council of California
Sum-100 (Rev. January 1, 2004)

SUMMONS

Page 1 of 1

Code of Civil Procedure §§ 412.20, 425

California Superior Court Form SUM-100 (Rev. 1/04)



CORPORATION SERVICE COMPANY®

Notice of Service of Process

KUB / ALL
Transmittal Number: 5462923
Date Processed: 11/28/2007

Primary Contact: Victor Wong
Presidio International, Inc.
111 Eighth Avenue
Floor 9th
New York, NY 10011

Entity:	Presidio International, Inc. Entity ID Number 0488463
Entity Served:	Presidio International, Inc.
Title of Action:	Robert Acheson vs. G.A.L.A., Inc.
Document(s) Type:	Summons/Complaint
Nature of Action:	Labor / Employment
Court:	Santa Clara Superior Court, California
Case Number:	107CV099461
Jurisdiction Served:	California
Date Served on CSC:	11/28/2007
Answer or Appearance Due:	30 Days
Originally Served On:	CSC
How Served:	Personal Service
Plaintiff's Attorney:	Roberty Byrnes 310-556-5637

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

1 JOANNA L. BROOKS (SBN 182986)
2 TIMOTHY C. TRAVELSTEAD (SBN 215260)
3 JACKSON LEWIS LLP
4 199 Fremont Street, 10th Floor
5 San Francisco, CA 94105
6 Telephone 415.394.9400
7 Facsimile: 415.394.9401

8 Attorneys for Defendant
9 PRESIDIO INTERNATIONAL, INC.

ENDORSED

2008 JAN 11 P 1:43

WM KOFFE, CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA
BY _____
DEPUTY CLERK

M. Rosales

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SANTA CLARA

12 ROBERT ACHESON, individually, and on
13 behalf of other members of the general public
14 similarly situated,

15 Plaintiff,

16 v.

17 G.A.L.A., INC., a Delaware corporation;
18 GIORGIO ARMANI CORPORATION, a New
19 York corporation; PRESIDIO
20 INTERNATIONAL, INC., a Delaware
21 Corporation; and DOES 1 through 10, inclusive,

22 Defendants.

Case No. 107 CV 099461

DEFENDANT PRESIDIO
INTERNATIONAL, INC.'S ANSWER
TO PLAINTIFF'S UNVERIFIED
CLASS ACTION COMPLAINT

BY FAX

Complaint Filed: November 21, 2007
Trial Date: None Set

23 Defendant Presidio International, Inc. ("Defendant") hereby answers Plaintiff Robert
24 Acheson's ("Plaintiff") unverified Class Action Complaint (the "Complaint").

25 GENERAL DENIAL

26 Pursuant to Code of Civil Procedure section 431.30 subdivision (d), Defendant denies
27 each and every allegation contained in Plaintiff's unverified Complaint and denies that Plaintiff
28 was injured or damaged as alleged, or at all.

1 JOANNA L. BROOKS (SBN 182986)
2 TIMOTHY C. TRAVELSTEAD (SBN 215260)
3 JACKSON LEWIS LLP
4 199 Fremont Street, 10th Floor
5 San Francisco, CA 94105
6 Telephone 415.394.9400
7 Facsimile: 415.394.9401

8 Attorneys for Defendant
9 PRESIDIO INTERNATIONAL, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ROBERT ACHESON, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

G.A.L.A., INC., a Delaware corporation;
GIORGIO ARMANI CORPORATION, a New
York corporation; PRESIDIO
INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 107 CV 099461

**DEFENDANT PRESIDIO
INTERNATIONAL, INC.'S ANSWER
TO PLAINTIFF'S UNVERIFIED
CLASS ACTION COMPLAINT**

Complaint Filed: November 21, 2007
Trial Date: None Set

Defendant Presidio International, Inc. ("Defendant") hereby answers Plaintiff Robert
Acheson's ("Plaintiff") unverified Class Action Complaint (the "Complaint").

GENERAL DENIAL

Pursuant to Code of Civil Procedure section 431.30 subdivision (d), Defendant denies
each and every allegation contained in Plaintiff's unverified Complaint and denies that Plaintiff
was injured or damaged as alleged, or at all.

AFFIRMATIVE DEFENSES

By way of affirmative defenses to the allegations of the Complaint herein, Defendant alleges as follows:

First Affirmative Defense
(Failure to State a Claim)

The Complaint, and all causes of action contained therein, fail to state facts sufficient to constitute a cause of action against Defendant.

Second Affirmative Defense
(Failure to Mitigate Damages)

Plaintiff is barred from recovering any damages for lost wages, or any recovery for lost wages must be reduced, if and to the extent that Plaintiff failed to exercise reasonable diligence to mitigate his alleged damages, if any.

Third Affirmative Defense
(Unclean Hands)

Plaintiff is barred from recovery under this Complaint if and to the extent that he comes to this Court with unclean hands.

Fourth Affirmative Defense
(Adequate Legal Remedies)

The Complaint's Sixth Cause of Action for equitable relief is barred in whole or in part to the extent Plaintiff has an adequate remedy at law.

Fifth Affirmative Defense
(Statute of Limitations)

The Complaint's First, Second, Third, Fourth, and Fifth causes of action are barred in whole or in part by the applicable statutes of limitations, including without limitation Code of Civil Procedure section 338 subdivision (a) or Code of Civil Procedure section 340 subdivisions (a) and (b), to the extent the claims exceed the three-year limitations period.

Sixth Affirmative Defense
(Statute of Limitations)

The Complaint's Sixth Cause of Action is barred in whole or in part by the applicable statute of limitations, including without limitation Business and Professions Code section 17208, to the extent the claims exceed the four-year limitations period.

Seventh Affirmative Defense
(Lack of Standing)

The Complaint, and all causes of action contained therein, are barred to the extent Plaintiff lacks standing to bring the instant action on behalf of himself or other unnamed putative class members.

Eighth Affirmative Defense
(Waiver)

The Complaint, and all causes of action contained therein, are barred by the doctrine of waiver.

Ninth Affirmative Defense
(Good Faith)

To the extent Plaintiff seeks statutory penalties, such penalty must be barred or reduced to the extent Defendant acted in good faith and non-willfully.

Tenth Affirmative Defense
(Estoppel)

Defendant alleges, on information and belief, that the Complaint, and all causes of action contained therein, are barred by the doctrine of estoppel.

Eleventh Affirmative Defense
(Laches)

Defendant alleges, on information and belief, that the Complaint, and all causes of action contained therein, are barred by the doctrine of laches.

Twelfth Affirmative Defense

(Compliance)

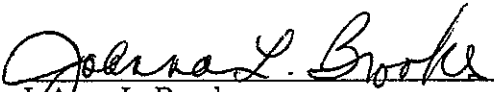
Any recovery on Plaintiff's Complaint with respect to the allegations of failure to pay wages owed or overtime is barred because Defendant complied with all applicable provisions of the California Labor Code, the applicable wage orders of the California Industrial Welfare Commission, and federal law.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by his Complaint;
2. That the Complaint and each claim for relief be dismissed in its entirety with prejudice;
3. That Plaintiff be denied each and every demand and prayer for relief contained in the Complaint;
4. For costs of suit incurred herein, including reasonable attorney's fees, as and where permitted under California law; and
5. For such other and further relief as the Court deems just and equitable.

Dated: January 11, 2008

JACKSON LEWIS LLP

By: 
Joanna L. Brooks
Timothy C. Travelstead
Attorneys for Defendant
PRESIDIO INTERNATIONAL, INC.

PROOF OF SERVICE

I, Linda A. Moore, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On January 11, 2008, I served the attached document(s):

DEFENDANT PRESIDIO INTERNATIONAL, INC.'S ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT

in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Mark Yablonovich, Esq.
Marc Primo, Esq.
Robert Bymes, Esq.
Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
Los Angeles, California 90067
Telephone: 310.556.5637
Facsimile: 301.861.9051

☒ **BY MAIL:** United States Postal Service - by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by Messenger Service to the above address.

☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above address within 24 hours by OVERNIGHT EXPRESS service.

☐ **BY FACSIMILE:** I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 11, 2008 at San Francisco, California.


LINDA A. MOORE

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1 INITIATIVE LEGAL GROUP LLP
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2 Marc Primo (SBN 216796)
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9 Attorneys for Plaintiff

10 JACKSON LEWIS LLP
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13 Attorneys for Defendants

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SANTA CLARA**

17 ROBERT ACHESON, individually, and on
18 behalf of other members of the general public
19 similarly situated,

20 Plaintiff,

21 vs.

22 G.A.L.A., INC., a Delaware corporation;
23 GIORGIO ARMANI CORPORATION, a New
York corporation; PRESIDIO
24 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

25 Defendants.

Case No. 107 CV 099461

CLASS ACTION

**STIPULATION AND [PROPOSED]
ORDER TO ALLOW FILING OF
FIRST AMENDED COMPLAINT**

[Assigned to: Hon. Mary Jo Levinger; Dept. 5]

Complaint filed: November 21, 2007

-1-

STIPULATION AND ORDER TO ALLOW FILING OF FIRST AMENDED COMPLAINT

(ENDORSED)
FILED
JUN 30 2008
KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY Lisa Wilson DEPUTY

STIPULATION

WHEREAS, on November 21, 2007, Plaintiff Robert Acheson ("Plaintiff") filed a Complaint in the present action in the Superior Court of the County of Santa Clara;

WHEREAS, on January 23, 2008, Plaintiff's Request for Dismissal of Defendants G.A.L.A., Inc. and Giorgio Armani Corporation was entered by the Court clerk;

WHEREAS, on April 29, 2008, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and Defendant Presidio International, Inc. alleging specific violations of the California Labor Code, including facts and theories to support the alleged violations;

WHEREAS, on May 30, 2008, the parties appeared before the Honorable Socrates Manoukian for a hearing on a discovery dispute, and Plaintiff was provided 30 days in which to file a First Amended Complaint;

WHEREAS, on June 10, 2008, the Labor and Workforce Development Agency notified Plaintiff by certified mail that it does not intend to investigate the alleged violations;

WHEREAS, the parties agree that the interests of judicial economy and efficiency are best served by allowing Plaintiff to file the proposed First Amended Complaint without the need for a noticed motion; and

WHEREAS, Plaintiff's proposed First Amended Complaint is attached as Exhibit A reflecting the additional class allegation for Defendant's violation of California Labor Code sections 226.7(a) and 512(a) (denial of meal periods), the additional class allegation for Defendant's violation of California Code of Regulations § 11070 (4)(C) (failure to pay wages for split shifts), and recovery under the Labor Code Private Attorneys General Act of 2004;

BASED ON THE FOREGOING, the parties, through their counsel of record and subject to this Court's approval, hereby STIPULATE AND AGREE as follows:

1. Subject to this Court's approval, Plaintiff may file the attached First Amended Complaint reflecting the additional class allegation for Defendant's violation of California Labor Code sections 226.7(a) and 512(a) (denial of meal periods), the additional class allegation for

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1 Defendant's violation of California Code of Regulations § 11070 (4)(C) (failure to pay wages for
2 split shifts), and recovery under the Labor Code Private Attorneys General Act of 2004;

3 2. The First Amended Complaint shall be deemed filed and served upon the date of
4 this Court's order. Defendant will be required to file an answer, other responsive pleading,
5 including Notice of Removal and related papers, to the First Amended Complaint within 15 days
6 after service of the First Amended Complaint.

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8 IT IS SO STIPULATED.

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10 Dated: June 21, 2008

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17 Dated: June 24, 2008

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Good cause appearing, IT IS HEREBY ORDERED.

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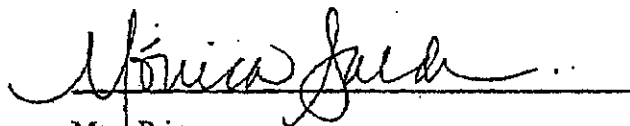
Dated: JUN 30 2008, 2008

27

28

Respectfully submitted,

Initiative Legal Group LLP



Marc Primo
Mónica Balderrama
Rebecca Labat
Linh Hua
Attorneys for Plaintiff Robert Acheson

Jackson Lewis LLP



JoAnna L. Brooks
Attorneys for Defendant Presidio International, Inc.

ORDER

Mary Jo Levinger

The Honorable Mary Jo Levinger
Judge of the Superior Court of California

-3-
STIPULATION AND ORDER TO ALLOW FILING OF FIRST AMENDED COMPLAINT

EXHIBIT "A"

1 Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
3 Mónica Balderrama (SBN 196424)
4 Rebecca Labat (SBN 221241)
5 Linh Hua (SBN 247419)
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7 1800 Century Park East, 2nd Floor
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9 Telephone: (310) 556-5637
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11 Attorneys for Plaintiff ROBERT ACHESON
12 and Aggrieved Employees

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ROBERT ACHESON, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

G.A.L.A., INC., a Delaware corporation;
GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case Number: 107 CV 099461

**CLASS ACTION and
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACTION**

FIRST AMENDED COMPLAINT

(1) Violation of California Labor Code §§ 510
and 1198 (Unpaid Overtime);

(2) Violation of California Labor Code §§ 201
and 202 (Wages Not Paid Upon Termination);

(3) Violation of California Labor Code § 204
(Failure to Pay Wages);

(4) Violation of California Labor Code
§ 226.7(a) and 512(a) (Denial of Meal Periods);

(5) Violation of California Labor Code
§ 226.7(a) (Denial of Rest Periods);

(6) Violation of California Code of Regulations
§ 11070 (4)(C) (Failure to Pay Wages for Split
Shift);

(7) Violation of California Labor Code § 226(a)
(Improper Wage Statements); and

(8) Violation of California Business & Professions Code §§ 17200, et seq.

Jury Trial Demanded

Plaintiff, individually and on behalf of all other members of the public similarly situated, alleges as follows:

JURISDICTION AND VENUE

1) This class action is brought pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The amount in controversy for each class representative, including claims for compensatory damages and pro rata share of attorneys' fees, is less than \$75,000.

2) This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction.

3) This Court has jurisdiction over all Defendants because, upon information and belief, each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4) Venue is proper in this Court because, upon information and belief, one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

5) California Labor Code §§ 2699 authorizes employees to sue directly for various civil penalties under the Labor Code.

1 6) Plaintiff has exhausted his administrative remedies by timely requesting and obtaining
2 verification from the California Labor and Workforce Development Agency that it does not intend
3 to investigate any alleged violations.

4 **THE PARTIES**

5 7) Plaintiff ROBERT ACHESON (hereinafter "Acheson" or "Plaintiff") is a resident of Santa
6 Clara County in the State of California.

7 8) Defendant G.A.L.A., INC. was and is, upon information and belief, a Delaware
8 corporation doing business in California, and at all times hereinafter mentioned, an employer
9 whose employees are engaged throughout this county, the State of California, or the various states
10 of the United States of America.

11 9) Defendant GIORGIO ARMANI CORPORATION was and is, upon information and
12 belief, a New York corporation doing business in California, and at all times hereinafter
13 mentioned, an employer whose employees are engaged throughout this county, the State of
14 California, or the various states of the United States of America.

15 10) Defendant PRESIDIO INTERNATIONAL, INC. was and is, upon information and belief,
16 a Delaware corporation doing business in California, and at all times hereinafter mentioned, an
17 employer whose employees are engaged throughout this county, the State of California, or the
18 various states of the United States of America.

19 11) Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
20 fictitious names DOES 1-10, but prays for leave to amend and serve such fictitiously named
21 Defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities
22 become known.

23 12) Plaintiff is informed and believes, and thereon alleges, that DOES 1-10 are the partners,
24 agents, owners, shareholders, managers or employees of G.A.L.A., INC., GIORGIO ARMANI
25 CORPORATION and/or PRESIDIO INTERNATIONAL, INC., and were acting on behalf of
26 G.A.L.A., INC., GIORGIO ARMANI CORPORATION and/or PRESIDIO INTERNATIONAL,
27 INC.

28 13) Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and

1 omissions alleged herein was performed by, or is attributable to G.A.L.A., INC., GIORGIO
2 ARMANI CORPORATION and/or PRESIDIO INTERNATIONAL, INC. and DOES 1-10
3 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on
4 the other's behalf. The acts of any and all Defendants were in accordance with, and represent the
5 official policy of, Defendants.

6 14) At all times herein mentioned, Defendants, and each of them, ratified each and every act or
7 omission complained of herein. At all times herein mentioned, Defendants, and each of them,
8 aided and abetted the acts and omissions of each and all the other Defendants in proximately
9 causing the damages herein alleged.

10 15) Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in
11 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
12 occurrences, and transactions alleged herein.

13 **CLASS ACTION ALLEGATIONS**

14 16) Plaintiff brings this action on his own behalf, as well as on behalf of each and all other
15 persons similarly situated, and thus, seeks class certification under California Code of Civil
16 Procedure § 382.

17 17) All claims alleged herein arise under California law for which Plaintiff seeks relief
18 authorized by California law.

19 18) The proposed class is comprised of and defined as:

20 All non-exempt or hourly paid employees who have been employed by Defendants in the
21 State of California within four years prior to the filing of this complaint until resolution of
22 this lawsuit.

23 19) There is a well defined community of interest in the litigation and the class is easily
24 ascertainable:

25 a. Numerosity: The members of the class (and each subclass, if any) are so numerous
26 that joinder of all members would be unfeasible and impractical. The membership of the entire
27 class is unknown to Plaintiff at this time, however, the class is estimated to be greater than one-
28 hundred (100) individuals and the identity of such membership is readily ascertainable by

1 inspection of Defendants' employment records.

2 b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
3 interests of each class member with whom he has a well defined community of interest, and
4 Plaintiff's claims (or defenses, if any) are typical of all class members' as demonstrated herein.

5 c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the
6 interests of each class member with whom he has a well-defined community of interest and
7 typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to
8 make known to the Court any relationship, conflicts or differences with any class member.
9 Plaintiff's attorneys and the proposed class counsel are versed in the rules governing class action
10 discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this
11 action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily
12 expended for the prosecution of this action for the substantial benefit of each class member.

13 d. Superiority: The nature of this action makes the use of class action adjudication
14 superior to other methods. Class action will achieve economies of time, effort and expense as
15 compared to separate lawsuits, and will avoid inconsistent outcomes because the same issues can
16 be adjudicated in the same manner and at the same time for the entire class.

17 e. Public Policy Considerations: Employers of the state violate employment and labor
18 laws every day. Current employees are often afraid to assert their rights out of fear of direct or
19 indirect retaliation. Former employees are fearful of bringing actions because they believe their
20 former employers may damage their future endeavors through negative references and/or other
21 means. Class actions provide the class members who are not named in the complaint with a type
22 of anonymity that allows for the vindication of their rights at the same time as their privacy is
23 protected.

24 20) There are common questions of law and fact as to the class (and each subclass, if any) that
25 predominate over questions affecting only individual members, including but not limited to:

26 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
27 accordance with the California Labor Code, was willful;

28 b. Whether Defendants required Plaintiff and the other class members to work over

eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay legally required overtime compensation to Plaintiff and the other class members;

c. Whether Defendants failed to promptly pay all wages due to Plaintiff and the other class members upon their discharge or resignation;

d. Whether Defendants deprived Plaintiff and the other class members of meal periods or required Plaintiff and the class members to work during meal periods without compensation;

e. Whether Defendants deprived Plaintiff and the other class members of rest periods or required Plaintiff and the class members to work during rest periods without compensation;

f. Whether Defendants required Plaintiff and the other class members to work split shifts and failed to pay all legally required wages to Plaintiff and other class members for working split shifts;

g. Whether Defendants complied with wage reporting as required by the California Labor Code, including but not limited to section 226;

h. Whether Defendants' conduct was willful or reckless;

i. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code §§ 17200, et seq.; and

j. The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

GENERAL ALLEGATIONS

21) At all times set forth, Defendants employed Plaintiff and other persons as non-exempt or hourly paid employees.

22) Defendants employed Plaintiff as an "Associate Manager," which is a non-exempt or hourly paid position, from on or about June 2007 to on or about September 2007, at Santa Clara, California business locations.

23) Defendants continue to employ non-exempt or hourly paid employees within California.

24) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and

1 about the requirements of California law.

2 25) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
3 have known that Plaintiff and other members of the class were entitled to receive certain wages for
4 overtime compensation and that they were not receiving certain wages for overtime compensation.

5 26) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
6 have known that Plaintiff and other class members were entitled to receive all the wages owed to
7 them upon discharge.

8 27) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
9 have known that Plaintiff and other class members were entitled to receive complete and accurate
10 wage statements in accordance with California law.

11 28) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
12 have known that Plaintiff and other class members were entitled to receive all meal periods or
13 payment of one hour of pay at Plaintiff's and class members' regular rate of pay when a meal
14 period was missed.

15 29) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
16 have known that Plaintiff and other class members were entitled to receive all rest periods or
17 payment of one hour of pay at Plaintiff's and class members' regular rate of pay when a rest
18 period was missed.

19 30) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
20 Defendants knew or should have known that they had a duty to compensate Plaintiff and other
21 members of the class, and that Defendants had the financial ability to pay such compensation, but
22 willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiff and other
23 members of the class that they were properly denied wages, all in order to increase Defendants'
24 profits.

25 31) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
26 have known that Plaintiff and other class members were entitled to receive one hour's pay at
27 minimum wage when Plaintiff and other class members worked split shifts.

28 32) California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall limit

1 the right of any wage claimant to "sue directly...for any wages or penalty due him [or her] under
2 this article."

3 33) At all times herein set forth, the California Labor Code § 2699 was applicable to Plaintiff's
4 employment by Defendants.

5 34) At all times herein set forth, California Labor Code § 2699, "The Labor Code Private
6 Attorneys General Act" (hereinafter "PAGA"), provides that for any provision of law under the
7 Labor Code that provides for a civil penalty to be assessed and collected by the Labor and
8 Workforce Development Agency for violation of the Labor Code, may, as an alternative, be
9 recovered through a civil action brought by an aggrieved employee on behalf of himself and other
10 current or former employees pursuant to procedures outlines in California Labor Code § 2699.3.

11 35) Pursuant to California Labor Code §2699, a civil action under PAGA may be brought by
12 an "aggrieved employee," who is any person that was employed by the alleged violator and
13 against whom one or more of the alleged violations was committed.

14 36) Plaintiff was employed by the Defendants and the alleged violations were committed
15 against him during his time of employment and is therefore, an aggrieved employee.

16 37) Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
17 including Plaintiff may as a matter of right amend an existing complaint to add a cause of action
18 arising under Labor Code §2699 only after the following requirements have been met:

- 19 a. The aggrieved employee shall give written notice (hereinafter "Notice") by
20 certified mail to the Labor and Workforce Development Agency (hereinafter
21 "Agency") and the employer of the specific provisions of the Labor Code alleged to
22 have been violated, including the facts and theories to support the alleged violation.
- 23 b. The Agency shall notify the employer and the aggrieved employee by certified mail
24 that it does not intend to investigate the alleged violation within thirty (30) calendar
25 days of the postmark date of the Notice. Upon receipt of the Notice or if no Notice
26 is provided within thirty-three (33) calendar days of the postmark date of the
27 Notice, the aggrieved employee may amend an existing complaint within sixty days
28 of receiving the Notice that the Agency does not intend to investigate the alleged

1 violation, to add a cause of action pursuant to Labor Code §2699 to recover civil
2 penalties in addition to any other penalties that the employee may be entitled to.

3 38) Plaintiff provided written notice by certified mail to the Agency and the Defendant of the
4 specific provisions of the Labor Code alleged to have been violated on April 28, 2008, including
5 the facts and theories to support the alleged violations.

6 39) The Agency notified Defendant and Plaintiff by certified mail on June 10, 2008, that it did
7 not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date
8 of the Notice.

9 40) Plaintiff has, therefore, satisfied the requirements of California Labor Code §2699.3 and
10 may amend his existing complaint and recover civil penalties, in addition to other remedies, for
11 violations of California Labor Code §§ 201, 202, 204, 226(a), 226.7(a), 510, 1198, and 512(a).

12 **FIRST CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 510 and 1198**

14 **(Against all Defendants)**

15 41) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
16 allegations set out in paragraphs 1 through 40.

17 42) California Labor Code § 1198 and the applicable Industrial Welfare Commission ("IWC")
18 Wage Order provide that it is unlawful to employ persons without compensating them at a rate of
19 pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
20 number of hours worked by the person on a daily or weekly basis.

21 43) Specifically, the applicable IWC Wage Order provides that Defendants are and were
22 required to pay Plaintiff and the other class members employed by Defendants, and working more
23 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-
24 one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in
25 a workweek.

26 44) The applicable IWC Wage Order further provides that Defendants are and were required to
27 pay Plaintiff and the other class members employed by Defendants, and working more than twelve
28 (12) hours in a day, overtime compensation at a rate of two times their regular rate of pay.

1 45) California Labor Code § 510 codifies the right to overtime compensation at one-and-one-
2 half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty
3 (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
4 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
5 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

6 46) During the relevant time period, Plaintiff and the other class members consistently worked
7 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, or in excess of forty
8 (40) hours in a week.

9 47) During the relevant time period, Defendants willfully failed to pay all overtime wages
10 owed to Plaintiff and the other class members.

11 48) During the relevant time period, Plaintiff and the other class members regularly received
12 incentives in the form of bonuses which were not incorporated in Plaintiff's and the other class
13 members' overtime compensation.

14 49) Defendants' failure to pay Plaintiff and the other class members the unpaid balance of
15 overtime compensation, as required by California laws, violates the provisions of California Labor
16 Code §§ 510 and 1198, and is therefore unlawful.

17 50) Pursuant to California Labor Code § 1194, Plaintiff and other class members are entitled to
18 recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.
19 Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members, and all
20 aggrieved employees are entitled to recover civil penalties in the amount of one hundred dollars
21 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
22 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus
23 costs and attorney's fees, for violations of the Labor Code §§ 510 and 1198.

24 **SECOND CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 201 and 202**

26 **(Against all Defendants)**

27 51) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
28 allegations set out in paragraphs 1 through 50.

1 52) At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an
2 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
3 and payable immediately, and that if an employee voluntarily leaves his or her employment, his or
4 her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless
5 the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in
6 which case the employee is entitled to his or her wages at the time of quitting.

7 53) During the relevant time period, Defendants willfully failed to pay Plaintiff and the other
8 class members who are no longer employed by Defendants their wages, earned and unpaid, either
9 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

10 54) Defendants' failure to pay Plaintiff and those class members who are no longer employed
11 by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
12 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and
13 202.

14 55) California Labor Code § 203 provides that if an employer willfully fails to pay wages
15 owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a
16 penalty from the due date, and at the same rate until paid or until an action is commenced; but the
17 wages shall not continue for more than thirty (30) days.

18 56) Plaintiff and the other class members are entitled to recover from Defendants the statutory
19 penalty for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day
20 maximum pursuant to California Labor Code § 203.

21 57) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members,
22 and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred
23 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
24 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation,
25 plus costs and attorney's fees, for violations of the Labor Code §§ 201 and 202.

THIRD CAUSE OF ACTION

Violation of California Labor Code § 204

(Against all Defendants)

58) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 57.

59) California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

60) California Labor Code § 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

61) California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

62) During the relevant time period, Defendants willfully failed to pay Plaintiff and the other class members the regular and overtime wages due to them, within any time period permissible by California Labor Code § 204.

63) Plaintiff and the other class members are entitled to recover all statutory penalties and remedies available for violations of California Labor Code § 204.

64) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members, and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of the Labor Code § 204.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7(a) and 512(a)

(Against all Defendants)

65) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 64.

66) . At all times herein set forth, the California IWC Order and California Labor Code §§ 226.7(a) and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

67) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the California IWC.

68) At all times herein set forth, California Labor Code § 512(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

69) At all times herein set forth, California Labor Code § 512(a) further provides that an employer may not require, cause or permit an employee to work for a period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

70) During the relevant time period, Plaintiff and the other members of the class who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without a meal period of not less than thirty (30) minutes.

1 71) During the relevant time period, Plaintiff and the other class members who were scheduled
2 to work for a period of time in excess of six (6) hours were required to work for periods longer
3 than five (5) hours without a meal period of not less than thirty (30) minutes.

4 72) During the relevant time period, Plaintiff and other members of the class who were
5 scheduled to work in excess of ten (10) hours but not longer than twelve (12) hours, and who did
6 not waive their legally-mandated meal periods by mutual consent were required to work in excess
7 of ten (10) hours without receiving a second meal period of not less than thirty (30) minutes.

8 73) During the relevant time period, Defendants required Plaintiff and other members of the
9 class to work during meal periods and failed to compensate Plaintiff and members of the class for
10 work performed during meal periods.

11 74) Defendants' conduct violates applicable IWC Wage Orders, and California Labor Code §§
12 226.7(a) and 512(a).

13 75) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are
14 entitled to recover from Defendants one additional hour of pay at the employee's regular hourly
15 rate of compensation for each work day that the meal period was not provided.

16 76) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members,
17 and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred
18 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
19 hundred dollars (\$200) for each aggrieved employee per pay period 226.7(a) and 512(a).

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code § 226.7(a)**

22 **(Against all Defendants)**

23 77) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
24 allegations set out in paragraphs 1 through 76.

25 78) At all times herein set forth, the California IWC Order and California Labor Code §
26 226.7(a) were applicable to Plaintiff's and other class members' employment by Defendants.

27 79) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer
28 shall require an employee to work during any rest period mandated by an applicable order of the

1 California IWC.

2 80) During the relevant time period, Defendants required Plaintiff and other members of the
3 class to work in excess of four (4) hours without providing a ten (10) minute rest period.

4 81) During the relevant time period, Defendants required Plaintiff and other members of the
5 class to work an additional four (4) hours without providing a second ten (10) minute rest period.

6 82) During the relevant time period, Defendants willfully required Plaintiff and other members
7 of the class to work during rest periods and failed to compensate Plaintiff and members of the
8 class for work performed during rest periods.

9 83) Defendants' conduct violates applicable IWC Wage Orders and California Labor Code §
10 226.7(a).

11 84) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are
12 entitled to recover from Defendants one additional hour of pay at the employees' regular rate of
13 compensation for each work day that the rest period was not provided.

14 85) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members,
15 and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred
16 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
17 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation,
18 plus costs and attorney's fees, for violations of the Labor Code § 226.7(a).

19 **SIXTH CAUSE OF ACTION**

20 **Violation of California Code of Regulations § 11070 (4)(C)**

21 **(Against all Defendants)**

22 86) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
23 allegations set out in paragraphs 1 through 85.

24 87) Section 4(C) of the California Code of Regulations § 11070 and IWC Wage Order 7-2001
25 provides that "[w]hen an employee works for a split shift, one (1) hour's pay at the minimum
26 wage shall be paid in addition to the minimum wage for that workday, except when the employee
27 resides at the place of employment." Section 2(M) defines "split shift" as a "work schedule,
28 which is interpreted by non-paid working periods established by the employer, other than bona

1 fide rest or meal periods.”

2 88) During the relevant time period, Plaintiff and the other class members did not reside at
3 their place of employment with Defendants.

4 89) During the relevant time period, Defendants have required Plaintiff and other class
5 members to work split shifts. Defendants have failed to pay the required compensation for the
6 split shift in the amount of one hour at the minimum wage for each day that the employee was
7 required to work a split shift.

8 90) Defendants have committed and continue to commit the acts alleged herein knowingly and
9 willfully, with the wrongful and deliberate intention of injuring Plaintiff and the other class
10 members, from improper motives amount to malice, and in conscious disregard of Plaintiff's and
11 other class members' rights.

12 91) Defendants' failure to pay Plaintiff and the other class members wages for working split
13 shifts, as required by California laws, violates Section 4(C) of the California Code of Regulations
14 § 11070 and IWC Wage Order 7-2001, and is therefore unlawful.

15 92) Pursuant to California Labor Code § 1194, Plaintiff and other class members are entitled to
16 recover their unpaid minimum wage compensation, as well as interest, costs, and attorneys' fees.

17 **SEVENTH CAUSE OF ACTION**

18 **Violation of California Labor Code § 226(a)**

19 **(Against all Defendants)**

20 93) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
21 allegations set out in paragraphs 1 through 92.

22 94) Defendants have intentionally and willfully failed to provide employees with complete and
23 accurate wage statements that fully comply with California Labor Code § 226(a) requirements.

24 95) As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the
25 other class members have suffered injury and damage to their statutorily-protected rights.

26 96) Specifically, Plaintiff and the other class members have been injured by Defendants'
27 intentional violation of California Labor Code § 226(a) because they were denied both their legal
28 right to receive, and their protected interest in receiving, accurate, itemized wage statements under

1 California Labor Code § 226(a).

2 97) Plaintiff and the other class members are entitled to recover from Defendants the greater of
3 their actual damages caused by Defendants' failure to comply with California Labor Code §
4 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

5 98) Plaintiff and the other class members are also entitled to an award of costs and reasonable
6 attorneys' fees pursuant to California Labor Code § 226(e).

7 99) Plaintiff and the other class members are also entitled to injunctive relief to ensure
8 compliance with this section, pursuant to California Labor Code § 226(g).

9 100) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class
10 members, and all aggrieved employees are entitled to recover civil penalties in the amount of one
11 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
12 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation, plus costs and attorney's fees, for violations of the Labor Code § 226(a).

14 EIGHTH CAUSE OF ACTION

15 Violation of California Business & Professions Code §§ 17200, et seq.

16 (Against all Defendants)

17 101) Plaintiff incorporates by reference and re-alleges as if fully stated herein the
18 material allegations set out in paragraphs 1 through 100.

19 102) Defendants' conduct, as alleged in this complaint, has been, and continues to be,
20 unfair, unlawful, and harmful to the Plaintiff, the other members of the class, and the general
21 public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning
22 of Code of Civil Procedure § 1021.5.

23 103) Defendants' activities as alleged herein are violations of California law, and
24 constitute unlawful business acts and practices in violation of California Business & Professions
25 Code §§ 17200, et seq.

26 104) A violation of California Business & Professions Code §§ 17200, et seq. may be
27 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
28 practice of requiring non-exempt or hourly paid employees, including Plaintiff and class members,

1 to work overtime without paying them proper compensation violates California Labor Code §§
 2 510 and 1198. Additionally, Defendants' policy and practice of requiring non-exempt or hourly
 3 employees, including Plaintiff and class members, to work through their rest periods without
 4 paying them proper compensation violates California Labor Code §§ 226.7(a) and 512(a).
 5 Defendants' policy and practice of failing to pay Plaintiff and those class members who are no
 6 longer employed by Defendants their wages earned and unpaid at the time of discharge, or within
 7 seventy-two hours of their leaving Defendants' employ, is a violation of California Labor Code §§
 8 201 and 202.

9 105) Plaintiff and the putative class members have been personally aggrieved by
 10 Defendants' unlawful business acts and practices alleged herein by the loss of money or property.

11 106) Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and
 12 the putative class members are entitled to restitution of the wages withheld and retained by
 13 Defendants during a period that commences four years prior to the filing of this complaint; a
 14 permanent injunction requiring Defendants to pay all outstanding wages due to class members; an
 15 award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
 16 applicable laws; and an award of costs.

17 REQUEST FOR JURY TRIAL

18 Plaintiff requests a trial by jury.

19 PRAYER FOR RELIEF

20 Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment
 21 against Defendants, jointly and severally, as follows:

22 Class Certification

- 23 1. That this action be certified as a class action;
- 24 2. That Plaintiff be appointed as the representative of the Class; and
- 25 3. That counsel for Plaintiff be appointed as Class Counsel.

26 As to the First Cause of Action

- 27 1. For general unpaid wages at overtime wage rates and such general and special damages as
- 28 may be appropriate;

1 2. For pre-judgment interest on any unpaid overtime compensation commencing from the
2 date such amounts were due;

3 3. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
4 Labor Code § 1194(a);

5 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
6 pursuant to California Labor Code § 2699(f) and (g); and

7 5. For such other and further relief as the Court may deem equitable and appropriate.

8 As to the Second Cause of Action

9 1. For all actual, consequential and incidental losses and damages, according to proof;

10 2. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other
11 class members who have left Defendants' employ;

12 3. For reasonable attorneys' fees and for costs of suit incurred herein;

13 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
14 pursuant to California Labor Code § 2699(f) and (g); and

15 5. For such other and further relief as the Court may deem equitable and appropriate.

16 As to the Third Cause of Action

17 1. For all actual, consequential and incidental losses and damages, according to proof;

18 2. For statutory penalties pursuant to California Labor Code § 204 for Plaintiff and all other
19 class members;

20 3. For pre-judgment interest on any untimely paid compensation, from the date such amounts
21 were due;

22 4. For reasonable attorneys' fees and costs of suit incurred herein;

23 5. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
24 pursuant to California Labor Code § 2699(f) and (g); and

25 6. For such other and further relief as the Court may deem equitable and appropriate.

26 As to the Fourth Cause of Action

27 1. For all actual, consequential, and incidental losses and damages, according to proof;

28 2. For wages pursuant to California Labor Code § 226.7(b);

- 1 3. For reasonable attorneys' fees and costs of suit incurred herein;
- 2 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
- 3 pursuant to California Labor Code § 2699(f) and (g); and
- 4 5. For such other and further relief as the Court may deem appropriate.

5 As to the Fifth Cause of Action

- 6 1. For all actual, consequential, and incidental losses and damages, according to proof;
- 7 2. For wages pursuant to California Labor Code § 226.7(b);
- 8 3. For reasonable attorneys' fees and costs of suit incurred herein;
- 9 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
- 10 pursuant to California Labor Code § 2699(f) and (g); and
- 11 5. For such other and further relief as the Court may deem equitable and appropriate.

12 As to the Sixth Cause of Action

- 13 1. For general unpaid wages for working split shifts and such general and special damages as
- 14 may be appropriate;
- 15 2. For pre-judgment interest on any unpaid compensation commencing from the date such
- 16 amounts were due;
- 17 3. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
- 18 Labor Code § 1194(a); and
- 19 4. For such other and further relief as the Court may deem equitable and appropriate.

20 As to the Seventh Cause of Action

- 21 1. For all actual, consequential and incidental losses and damages, according to proof;
- 22 2. For statutory penalties pursuant to California Labor Code § 226(e);
- 23 3. For injunctive relief to ensure compliance with this section, pursuant to California Labor
- 24 Code § 226(g);
- 25 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
- 26 Labor Code § 226(e);
- 27 5. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
- 28 pursuant to California Labor Code § 2699(f) and (g); and

1 6. For such other and further relief as the Court may deem equitable and appropriate.

2 As to the Eighth Cause of Action

3 1. For restitution of unpaid wages to all class members and prejudgment interest from the day
4 such amounts were due and payable;

5 2. For the appointment of a receiver to receive, manage and distribute any and all funds
6 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
7 result of violations of California Business & Professions Code §§ 17200 et seq.;

8 3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code
9 of Civil Procedure § 1021.5;

10 4. For injunctive relief to ensure compliance with this section, pursuant to California
11 Business & Professions Code §§ 17200, et seq.; and

12 5. For such other and further relief as the Court may deem equitable and appropriate.

13
14 Dated: June 27, 2008

Respectfully submitted,

Initiative Legal Group LLP

15
16
17 By: Mónica Balderrama
18 Mark Yablonovich
19 Marc Primo
20 Mónica Balderrama
21 Rebecca Labat
22 Linh Hua
23 Attorneys for Plaintiff and Aggrieved
24 Employees
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On June 27, 2008, I served the within document(s) described below as:

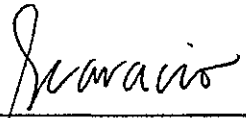
**STIPULATION AND [PROPOSED] ORDER TO ALLOW FILING OF
FIRST AMENDED COMPLAINT**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- ☒ **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- ☐ **PERSONAL:** I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- ☐ **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- ☐ **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on June 27, 2008, at Los Angeles, California.



Karen Acio

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Marc Primo (SBN 216796), Linh Hua (247219) Initiative Legal Group, LLP 1800 Century Park East, Second Floor Los Angeles, CA 90067		TELEPHONE NO.: 310.556.5637	FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiff Robert Acheson			
Insert name of court and name of judicial district and branch court, if any: Santa Clara County Superior Courts - Downtown			
PLAINTIFF/PETITIONER: Robert Acheson			
DEFENDANT/RESPONDENT: G.A.L.A., Inc., et al.			
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Employment Law		CASE NUMBER: 107 CV 099461	
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -			

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☐ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name): on (date):
- (4) ☐ Cross-complaint filed by (name): on (date):
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☒ Other (specify):* **Defendant G.A.L.A., Inc. and Defendant Giorgio Armani, Corp.**

Date: 01.22.08

Linh Hua

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
- ☐ Cross - complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: 01.22.08

Linh Hua

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint or Response (Family Law) seeking affirmative relief is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (f) or (j).

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
- ☐ Cross - complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on (date):
4. ☐ Dismissal entered on (date): as to only (name):
5. ☐ Dismissal not entered as requested for the following reasons (specify):
6. ☐ a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide
☐ a copy to conformed ☐ means to return conformed copy

Date:

Clerk, by _____, Deputy

Page 1 of 1

REQUEST FOR DISMISSAL



INITIATIVE LEGAL GROUP LLP

Via Facsimile

To: Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

From: Karen Acio
Legal Assistant to
Monica Balderrama, Esq.
Rebecca Labat, Esq.
Linh Hua, Esq.
310.556.5637 main
310.861.9051 facsimile

Date: March 28, 2008

Subject: Acheson v. G.A.L.A. et al. (Case No. 107 CV 099461)

CASE MANAGEMENT STATEMENT

Total Pages: 6 (including cover)

This facsimile contains **PRIVILEGED AND CONFIDENTIAL INFORMATION** intended only for the use of the addressee(s) named below. If you are not the intended recipient of this facsimile or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the address below via U.S. Postal Service. Thank you.

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Marc Primo (216796), Monica Balderrama (196424), Linh Hua (247419) Initiative Legal Group LLP 1800 Century Park East, Second Floor Los Angeles, CA 90067 TELEPHONE NO: 310.556.5637 FAX NO. (Optional): 310.861.9051 E-MAIL ADDRESS (Optional): MBalderrama@InitiativeLegal.com ATTORNEY FOR (Name): Plaintiff Robert Acheson		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		
PLAINTIFF/PETITIONER: Robert Acheson DEFENDANT/RESPONDENT: G.A.L.A., Inc., et al.		
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)		
		CASE NUMBER: 107CV099461
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: April 15, 2008 Time: 2:15 p.m. Dept: 5 Div.: Room: Address of court (if different from the address above):		

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☒ This statement is submitted by party (name): Plaintiff Robert Acheson
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date): 11.21.07
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☒ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
Plaintiff alleges 6 causes of action: (1) Violation of CLC § 501,1198 (unpaid overtime), (2) Violation of CLC § 201,202 (wages not paid upon termination), (3) Violation of § 204 (failure to pay wages), (4) Violation of CLC § 226.7(a)(denial of rest breaks), (5) Violation of § 226(a) (improper wage statements); (6) Violation of Cal. Bus. & Prof. Code §§ 17200, et seq. (Unfair Competition Laws).

CM-110

PLAINTIFF/PETITIONER: Robert Acheson	CASE NUMBER:
DEFENDANT/RESPONDENT: G.A.L.A., Inc., et al.	107CV099461

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date (indicate source and amount), estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Plaintiff alleges Defendant denied Plaintiff and putative class members proper overtime compensation. Plaintiff also alleges Defendant violated record keeping laws, failed to pay waiting time penalties, failed to pay all wages upon termination of employment, failed to provide rest breaks or compensation for missed rest breaks. Plaintiff also alleges these acts jointly and severally constitute unfair business practices. Plaintiff will seek leave to amend his Complaint to include allegations for Defendant's failure to properly provide meal periods or compensation for missed periods.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☒ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): It is premature to specify days as class cert. will greatly increase length of trial.
b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: Robert Acheson	CASE NUMBER:
DEFENDANT/RESPONDENT: G.A.L.A., Inc., et al.	107CV099461

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation
(2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
(3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
(4) ☐ Binding judicial arbitration
(5) ☐ Binding private arbitration
(6) ☐ Neutral case evaluation
(7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
b. Reservation of rights: ☐ Yes ☐ No
c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
(1) Name of case:
(2) Name of court:
(3) Case number:
(4) Status:
☐ Additional cases are described in Attachment 14a.
b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
Plaintiff's Motion for Leave to Amend Complaint; Plaintiff's Motion for Class Certification; Plaintiff's Motion to Compel Defendant's Responses to Special Interrogatory No. 1

CM-110

PLAINTIFF/PETITIONER: Robert Acheson	CASE NUMBER:
DEFENDANT/RESPONDENT: G.A.L.A., Inc., et al.	107CV099461

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (describe all anticipated discovery):

Party	Description	Date
Plaintiff	Written Discovery	July 2008
Plaintiff	Deposition of Defendant's Corporate Representative (PMQ)	August 2008

- c. ☒ The following discovery issues are anticipated (specify):
Production of witness names and contact information

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

19. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):

- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

The parties have agreed to schedule and complete a mediation within the next few months.

21. Case management orders

Previous case management orders in this case are (check one): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: 03.28.08

Linh Hua

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On March 28, 2008, I served the within document(s) described below as:

CASE MANAGEMENT STATEMENT

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes address as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

☒ **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.

☐ **PERSONAL:** I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.


☐ **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).

☒ **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.

☐ **ELECTRONIC MAIL:** By agreement.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on March 28, 2008, at Los Angeles, California.


Karen Acio

1 INITIATIVE LEGAL GROUP LLP
Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
Mónica Balderrama (SBN 196424)
3 Rebecca Labat (SBN 221241)
Linh Hua (SBN 247419)
4 Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051
1800 Century Park East, 2nd Floor
7 Los Angeles, California 90067
Telephone: (310) 556-5637
8 Facsimile: (310) 861-9051.

9 Attorneys for Plaintiff

10 JACKSON LEWIS LLP
JoAnna L. Brooks (SBN 182986)
11 199 Fremont Street, 10th Floor
San Francisco, California 94105
12 Telephone: (415) 394-9400
Facsimile: (415) 394-9401

13 Attorneys for Defendants

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SANTA CLARA**

17 ROBERT ACHESON, individually, and on
18 behalf of other members of the general public
19 similarly situated,

20 Plaintiff,

21 vs.

22 G.A.L.A., INC., a Delaware corporation;
23 GIORGIO ARMANI CORPORATION, a New
York corporation; PRESIDIO
24 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

25 Defendants.
26
27
28

Case No. 107 CV 099461

CLASS ACTION

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER CONCERNING
DISCOVERY AND CONFIDENTIAL
INFORMATION**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action will likely involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
5 Furthermore, the parties desire to memorialize their agreement regarding inadvertent production of
6 privileged materials and/or materials protected by the attorney work product doctrine.
7 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated
8 Protective Order. The parties acknowledge, as set forth in Section 10, below, that this Stipulated
9 Protective Order creates no entitlement to file confidential information under seal.

10 2. DEFINITIONS

11 2.1 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and outside counsel (and their support staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner generated, stored, or maintained (including, among other things, documents,
15 electronic data, testimony, transcripts, or tangible things) that are produced or generated in
16 disclosures or responses to discovery in this matter.

17 2.3 Confidential Information or Items: information (regardless of how
18 generated, stored or maintained) or tangible things that (a) reveal confidential and/or proprietary
19 information regarding Defendant, or its parent or affiliates; and/or (b) reveal personal, identifying
20 and/or confidential information about any third party, including such types of information as are
21 protected by the California constitutional right of privacy; and/or (c) reveal information that
22 pertains in any way to allegations of employee misconduct of any manner on the part of Plaintiff;
23 and/or (d) reveal personal, medical and/or financial information about any Party.

24 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 2.5 Producing Party: a Party or non-party that produces Disclosure or
27 Discovery Material in this action.

1 2.6 Designating Party: a Party or non-party that designates information or items
2 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

3 2.7 Privileged Material: all items or information, or portions of items or
4 information, regardless of the medium or manner generated, stored, or maintained (including,
5 among other things, testimony, transcripts, or tangible things) that are produced or generated in
6 disclosures or responses to discovery in this matter that are subject the attorney-client privilege
7 and/or the attorney work product doctrine.

8 2.8 Protected Material: any Disclosure or Discovery Material that is designated
9 as "CONFIDENTIAL."

10 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
11 retained to represent or advise a Party in this action (as well as their internal support staffs).

12 2.10 House Counsel: attorneys who are employees of a Party (as well as their
13 internal support staffs).

14 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
15 their support staffs).

16 2.12 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
18 witness or as a consultant in this action. This definition includes a professional jury or trial
19 consultant retained in connection with this litigation.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
22 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
23 subcontractors.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also any information copied or extracted therefrom, as well as all
27 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
28 presentations by parties or counsel to or in court or in other settings that might reveal Protected

1 Material.

2 4. DURATION

3 Even after the termination of this litigation, the confidentiality obligations imposed
4 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
5 order otherwise directs.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
8 Party or non-party that designates information or items for protection under this Order must take
9 care to limit any such designation to specific material that qualifies under the appropriate
10 standards. Mass, indiscriminate, or routinized designations are prohibited.

11 If it comes to a Party's or a non-party's attention that information or items that it
12 designated for protection do not qualify for protection at all, or do not qualify for the level of
13 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
14 withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this
16 Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
17 material that qualifies for protection under this Order must be clearly so designated before the
18 material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (apart from transcripts of
21 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
22 "CONFIDENTIAL" at the top, bottom or right margin of each page that contains protected
23 material or, alternatively, on the first page of a multi-page document, if the entire document is
24 protected. If only a portion or portions of the material on a page qualifies for protection, the
25 Producing Party should endeavor to identify the protected portion(s) (*e.g.*, by making appropriate
26 markings in the margins) and specify, for each portion, the level of protection being asserted
27 (either "CONFIDENTIAL").

28 A Party or non-party that makes original documents or materials available for

1 inspection need not designate them for protection until after the inspecting Party has indicated
2 which material it would like copied and produced. During the inspection and before the
3 designation, all of the material made available for inspection shall be deemed
4 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and
5 produced, the Producing Party must determine which documents, or portions thereof, qualify for
6 protection under this Order, then, before producing the specified documents, the Producing Party
7 must affix the legend "CONFIDENTIAL" at the top, bottom or right margin of each page that
8 contains Protected Material. If only a portion or portions of the material on a page qualifies for
9 protection, the Producing Party also should endeavor to identify the protected portion(s) (e.g., by
10 making appropriate markings in the margins).

11 (b) for testimony given in deposition or in other pretrial or trial
12 proceedings, that the Party or non-party offering or sponsoring, or giving the testimony identify on
13 the record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
14 and further specify any portions of the testimony that qualify as "CONFIDENTIAL." When it is
15 impractical to identify separately each portion of testimony that is entitled to protection, and when
16 it appears that substantial portions of the testimony may qualify for protection, the Party or non-
17 party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition
18 or proceeding is concluded) a right to, during the time allocated for the witness to review and
19 execute the deposition transcript, identify the specific portions of the testimony as to which
20 protection is "CONFIDENTIAL" during this review period.

21 Transcript pages containing Protected Material must be separately bound by the
22 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as
23 instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

24 (c) for information produced in some form other than documentary, and
25 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
26 the container or containers in which the information or item is stored the legend
27 "CONFIDENTIAL." If only portions of the information or item warrant protection, the Producing
28 Party, to the extent practicable, should identify the protected portions.

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items as "CONFIDENTIAL" does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such material. If material is
4 appropriately designated as "CONFIDENTIAL" after the material was initially produced, the
5 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
6 that the material is treated in accordance with the provisions of this Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
9 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
10 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
11 waive its right to challenge a confidentiality designation by electing not to mount a challenge
12 promptly after the original designation is disclosed.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
14 Party's confidentiality designation must do so in good faith and must begin the process by
15 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
16 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
17 for its belief that the confidentiality designation was not proper and must give the Designating
18 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
19 change in designation is offered, to explain the basis for the chosen designation. A challenging
20 Party may proceed to the next stage of the challenge process only if it has first engaged in this
21 meet and confer process.

22 6.3 Judicial Intervention. A Party that elects to press a challenge to a
23 confidentiality designation after considering the justification offered by the Designating Party may
24 file and serve a motion that identifies the challenged material and sets forth in detail the basis for
25 the challenge. Each such motion must be accompanied by a competent declaration that affirms
26 that the movant has complied with the meet and confer requirements imposed in the preceding
27 paragraph and that sets forth with specificity the justification for the confidentiality designation
28 that was given by the Designating Party in the meet and confer dialogue. Because the burden of

1 establishing the appropriateness of the confidentiality designation ultimately falls on the
2 Designating Party, in the event that the challenging party files and serves a reply brief in support
3 of its motion, the Designating Party shall, unless otherwise ordered, be entitled to file and serve a
4 sur-reply brief of the same length permitted for reply briefs.

5 Until the court rules on the challenge, all parties shall continue to afford the
6 material in question the level of protection to which it is entitled under the Producing Party's
7 designation.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a non-party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order. When
13 the litigation has been terminated, a Receiving Party must comply with the provisions of section
14 11, below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons authorized under
17 this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
20 disclose any information or item designated CONFIDENTIAL only to:

- 21 (a) the Receiving Party's Counsel in this action;
- 22 (b) the officers, directors, and employees of the Receiving Party to
23 whom disclosure is reasonably necessary for this litigation;
- 24 (c) experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this litigation;
- 26 (d) the Court and its personnel;
- 27 (e) court reporters, their staffs, and professional vendors to whom
28 disclosure is reasonably necessary for this litigation;

1 (f) during their depositions, witnesses in the action to whom disclosure
2 is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
3 reveal Protected Material must be separately bound by the court reporter and may not be disclosed
4 to anyone except as permitted under this Stipulated Protective Order; or

5 (g) the author of the document or the original source of the information.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

8 If a Receiving Party is served with a subpoena or an order issued in other litigation
9 that would compel disclosure of any information or items designated in this action as
10 "CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by fax,
11 if possible) immediately and in no event more than three court days after receiving the subpoena
12 or order. Such notification must include a copy of the subpoena or court order.

13 The Receiving Party also must immediately inform in writing the party who caused
14 the subpoena or order to issue in the other litigation that some or all the material covered by the
15 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
16 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that
17 caused the subpoena or order to issue.

18 The purpose of imposing these duties is to alert the interested parties to the
19 existence of this Protective Order and to afford the Designating Party in this case an opportunity to
20 try to protect its confidentiality interests in the court from which the subpoena or order issued.
21 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
22 of its confidential material and nothing in these provisions should be construed as authorizing or
23 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

24 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this Stipulated
27 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
28 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected

1 Material, and (c) inform the person or persons to whom unauthorized disclosures were made of all
2 the terms of this Order.

3 10. FILING PROTECTED MATERIAL

4 Without written permission from the Designating Party or a court order secured
5 after appropriate notice to all interested persons, a Party may not file in the public record in this
6 action any Protected Material.

7 11. PRIVILEGED MATERIAL

8 The parties shall be permitted but not obligated to review materials for privilege
9 and/or work product protection prior to producing them in this matter. If a Producing Party
10 discovers that it has produced Privileged Material, it may notify the Receiving Party, which will
11 promptly destroy or return all copies of such Privileged Material. Furthermore, if the Receiving
12 Party has already disclosed the Privileged Materials prior to receiving this notice, the Receiving
13 Party must take reasonable steps to retrieve the materials or ensure their destruction. Unless
14 otherwise agreed by the parties in writing, no party shall be permitted to retain Privileged
15 Materials after receiving notification under this section, even if the parties dispute the privilege
16 and/or work product status of the materials. If the parties subsequently agree or the Court orders
17 that such materials should be disclosed, the Producing Party will produce new copies of the
18 materials.

19 12. FINAL DISPOSITION

20 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
21 days after the final termination of this action, each Receiving Party must return all Protected
22 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all
23 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
24 the Protected Material. With permission in writing from the Designating Party, the Receiving
25 Party may destroy some or all of the Protected Material instead of returning it. Whether the
26 Protected Material is returned or destroyed, the Receiving Party must submit a written certification
27 to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty
28 day deadline that identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
3 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
4 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
5 even if such materials contain Protected Material. Any such archival copies that contain or
6 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
7 (DURATION), above.

8 13. MISCELLANEOUS

9 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

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1 13.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to disclosing or
3 producing any information or item on any ground not addressed in this Stipulated Protective
4 Order. Similarly, no Party waives any right to object on any ground to use of any of the material
5 covered by this Protective Order at trial, in evidence or otherwise.
6

7 Respectfully submitted,


8 *March*
9 Dated: ~~February~~ 25, 2008

Initiative Legal Group LLP

10 
11 Marc Primo
12 Mónica Balderrama
13 Rebecca Labat
14 Linh Hua
15 Attorneys for Plaintiff

16 *March*
17 Dated: ~~February~~ 18, 2008

Jackson Lewis LLP

18 
19 JoAnna L. Brooks
20 Attorneys for Defendant

21 ORDER

22 Good cause appearing, IT IS HEREBY ORDERED.

23 Dated: _____, 2008

24 _____
25 The Honorable Kevin McKenney
26 Judge of the Superior Court of California
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On March 26, 2008, I served the within document(s) described below as:

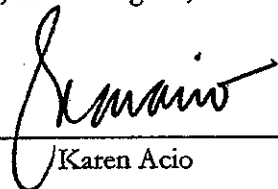
**STIPULATION AND [PROPOSED] PROTECTIVE ORDER CONCERNING
DISCOVERY AND CONFIDENTIAL INFORMATION**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes address as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () **PERSONAL:** I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- (X) **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- () **ELECTRONIC MAIL:** By agreement.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on March 26, 2008, at Los Angeles, California.



Karen Acio

1 Mark Yablonovich (SBN 186670)
Marc Primo (SBN 216796)
2 Mónica Balderrama (SBN 196424)
3 Rebecca Labat (SBN 221241)
4 Linh Hua (SBN 247419)
Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff ROBERT ACHESON
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
behalf of other members of the general public
13 similarly situated,

14 Plaintiff,

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO COMPEL DEFENDANT
PRESIDIO INTERNATIONAL, INC.'S
FURTHER RESPONSES TO SPECIAL
INTERROGATORIES, SET ONE**

[Filed concurrently with Plaintiff's
Memorandum of Points and Authorities;
Separate Statement; and Declaration of Linh
Hua in Support Thereof; and [Proposed] Order]

Date: May 30, 2008

Time: 10:00 a.m.

Dept.: 7

1 **TO THE HONORABLE COURT, DEFENDANT AND ITS ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on May 30, 2008 at 10:00 a.m. or as soon thereafter as the
4 matter may be heard in Department 7 of the above-captioned court, located at 191 N. First Street,
5 San Jose, California 95113, Plaintiff Robert Acheson ("Plaintiff") will, and hereby does, move for
6 an order compelling Defendant Presidio International, Inc. ("Defendant") to further respond to
7 Plaintiff's Special Interrogatories, Set One to which Defendant failed to fully and adequately
8 respond (the "Motion").

9 This Motion is made pursuant to California Code of Civil Procedure section 2030.300, on
10 the grounds that Defendant has made boilerplate objections and has unjustifiably refused to
11 respond in violation of its obligations under the Discovery Act. Plaintiff requests an order
12 compelling Defendant to respond fully to the disputed discovery request, without objections.

13 **PLEASE TAKE FURTHER NOTICE THAT** Plaintiff will, and hereby does, move the
14 Court, pursuant to California Code of Civil Procedure section 2030.300(d), for an award of
15 monetary sanctions against Defendant and its attorneys, Jackson Lewis, in the amount of
16 \$4,119.50 for reimbursement of the costs and reasonable attorneys' fees incurred in meeting and
17 conferring on this discovery issue, drafting and preparing this Motion and any Reply papers, and
18 appearing at the hearing of this Motion.

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1 The Motion will be based upon this Notice, the following Memorandum of Points and
2 Authorities, the Declaration of Linh Hua, the Separate Statement in Support of the Motion, the
3 pleadings and papers on file herein and upon any other matters that may be presented to the Court
4 at the hearing.

5
6 Dated: April 22, 2008

Respectfully submitted,

INITIATIVE LEGAL GROUP, LLP

8
9 By: 

Marc Primo

Mónica Balderrama

Rebecca Labat

Linh Hua

Attorneys for Plaintiff Robert Acheson

1 Mark Yablonovich (SBN 186670)
Marc Primo (SBN 216796)
2 Mónica Balderrama (SBN 196424)
Rebecca Labat (SBN 221241)
3 Linh Hua (SBN 247419)
4 Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff ROBERT ACHESON
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
behalf of other members of the general public
13 similarly situated,

14 Plaintiff,

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
21
22

Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL
DEFENDANT PRESIDIO
INTERNATIONAL, INC.'S FURTHER
RESPONSES TO SPECIAL
INTERROGATORIES, SET ONE**

Date: May 30, 2008

Time: 10:00 a.m.

Dept.: 7

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Robert Acheson ("Plaintiff"), a former employee of Defendant Presidio International, Inc. ("Defendant"), individually and on behalf of others similarly situated, respectfully seeks the names and contact information of all putative class members who were or are employed by Defendant.

I. INTRODUCTION

Plaintiff brings forth this putative wage and hour class action and, by Special Interrogatory No. 1, dutifully seeks to obtain discoverable facts with which to move for class certification. Specifically, Plaintiff seeks the names and contact information of putative class members who were subject to the same or similar alleged Labor Code violations as Plaintiff in their employment with Defendant during the relevant statutory period.

Plaintiff's request for the full names, last known addresses, and telephone numbers of putative class members is routinely and fundamentally permitted by California's Civil Discovery Act. Such information is necessary to gather evidence regarding Defendant's alleged violations, particularly for those violations in which Defendant has not maintained or has failed to provide documentary evidence through the exchange of formal discovery. Despite Plaintiff's agreement to enter into a stipulated protective order to mitigate Defendant's privacy concerns, Defendant, nonetheless, refuses to respond to Plaintiff's Special Interrogatory No. 1.

The California Supreme Court and California Court of Appeal have both recently held that putative class members are potential percipient witnesses in class action cases whose identities and locations are properly discoverable (see, infra, Pioneer, Belaire-West, and Puerto). Defendant's refusal to produce the names and contact information of putative class members is in direct contravention of clear California precedence set forth in Belaire-West Landscape, Inc. v. Superior Court (Rodriguez) (2007) 149 Cal. App. 4th 554, 562, Pioneer Electronics (USA), Inc. v. Superior Court (Olmstead) (2007) 40 Cal. 4th 360, and Puerto v. Superior Court (2008) 158 Cal. App. 4th 1242.

Accordingly, after Plaintiff's exhaustive efforts to informally resolve this issue, and for the reasons set forth more specifically below, Plaintiff respectfully requests this Court to grant his

1 Motion to Compel Further Responses to Plaintiff's Special Interrogatories, Set One seeking the
2 names and contact information of all putative class members.

3 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

4 On November 21, 2007, Plaintiff filed a Class Action Complaint in the Superior Court of
5 California for Santa Clara County, alleging class-wide claims against Defendant for the following
6 violations: (1) Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime); (2)
7 Violation of California Labor Code sections 201 and 202 (Wages Not Paid Upon Termination);
8 (3) Violation of California Labor Code section 204 (Failure to Pay Wages); (4) Violation of
9 California Labor Code section 226.7(a) (Denial of Rest Periods); (5) Violation of California Labor
10 Code section 226(a) (Improper Wage Statements); and (6) Violation of California Business &
11 Professions Code sections 17200, *et seq.*

12 On or about January 28, 2008, Plaintiff served Special Interrogatories, Set One on
13 Defendant, seeking the full name, last known address, and telephone number for all putative class
14 members four years prior to filing the Complaint until the present.¹

15 On February 13, 2008, Defendant requested that Plaintiff enter into a protective order
16 regarding discovery.² In response to Defendant's request and in an effort to encourage the
17 exchange of information and judicial economy, Plaintiff agreed to enter into a protective order
18 regarding discovery.³ On February 27, 2008, Plaintiff provided Defendant a drafted Stipulation
19 and [Proposed] Protective Order Concerning Discovery and Confidential Information ("Protective
20 Order").⁴

21 On March 3, 2008, Defendant served Plaintiff, via U.S. Mail, its responses to Plaintiff's
22 Special Interrogatories, Set One, which consisted of pure objections.⁵ On March 18, 2008,
23

24 ¹ See Declaration of Linh Hua, ("Hua Decl.") ¶ 2, submitted concurrently herewith, Exh. A.

25 ² See *Id.* at ¶ 3.

26 ³ See *Id.*

27 ⁴ See *Id.* at ¶ 4, Exh. B.

28 ⁵ See *Id.* at ¶ 5.

1 Defendant signed and agreed to the terms of the Protective Order.⁶ On March 25, 2008, pursuant
 2 to the parties' earlier agreement, Plaintiff lodged the Protective Order for both parties.⁷ The
 3 Protective Order was signed by the Honorable Mary Jo Levinger on March 28, 2008 and entered
 4 on April 1, 2008.⁸

5 After many attempts to informally resolve this discovery dispute, Plaintiff now timely files
 6 his Motion within 50 days from the date of Defendant's mail-served responses to Plaintiff's
 7 Special Interrogatory No. 1.

8 **III. MEET AND CONFER EFFORTS**

9 Plaintiff's counsel contacted Defendant's counsel on March 18, 2008 for a scheduled
 10 telephonic meet and confer to discuss Defendant's objections to Special Interrogatory No. 1.⁹
 11 During this meet and confer session, Defendant indicated that it would provide only the names and
 12 employee identification numbers of putative class members.¹⁰ Plaintiff did not agree that such
 13 limited information was fully responsive to Special Interrogatory No. 1, and it would not allow for
 14 Plaintiff to gather essential information during pre-certification discovery.¹¹ Plaintiff expressed
 15 that a motion to compel further responses would be filed should Defendant refuse to provide fully
 16 substantive responses.¹²

17 On April 2, 2008, Plaintiff sent a letter to Defendant providing a thorough analysis of the
 18 legal authorities governing Plaintiff's right to information sought in Special Interrogatory No. 1.¹⁵
 19
 20

21 ⁶ See Id. at ¶ 6.

22 ⁷ See Id. at ¶ 7.

23 ⁸ See Id., Exh. C.

24 ⁹ See Id.

25 ¹⁰ See Id.

26 ¹¹ See Id.

27 ¹² See Id.

28 ¹⁵ See Id. at ¶ 8, Exh. D.

1 Plaintiff asked that Defendant supplement its objections with substantive responses by April 9,
2 2008.¹⁶

3 On April 17, 2008, counsel for both parties discussed via telephone their respective
4 positions of Defendant's response to Plaintiff's Special Interrogatory No. 1.¹⁷ Defendant
5 continued to hold its position that it would not provide the contact information of putative class
6 members.¹⁸ Defendant also confirmed during that conversation that Defendant would be available
7 on May 30, 2008 for a hearing on this Motion.¹⁹ On April 17, 2008, Defendant faxed a letter
8 responding to Plaintiff's April 2, 2008 letter.²⁰ Defendant reiterates unwillingness to provide the
9 requested information.²¹ To date, Defendant has not provided any substantive responses to
10 Plaintiff's Special Interrogatory No. 1.²²

11 IV. LEGAL ARGUMENT

12 A. California's Civil Discovery Act Permits A Wide Scope Of Discovery.

13 The California Civil Discovery Act makes abundantly clear the wide scope of permissible
14 discovery:

15 Unless otherwise limited by order of the court in accordance with
16 this title, *any party may obtain discovery regarding any matter,
17 not privileged, that is relevant to the subject matter involved in
18 the pending action or to the determination of any motion made in
19 that action*, if the matter either is itself admissible in evidence or
20 appears reasonably calculated to lead to the discovery of
21 admissible evidence.

19 Cal. Civ. Proc. Code § 2017.010 (emphasis added).

20 California's legislature deliberately drafted statutes allowing an "expansive scope of
21 discovery" with the intent "to educate the parties concerning their claims and defenses so as to
22

23 ¹⁶ See Id. at ¶ 8.

24 ¹⁷ See Id. at ¶ 9.

25 ¹⁸ See Id.

26 ¹⁹ See Id.

27 ²⁰ See Id. at ¶ 10, Exh. E.

28 ²¹ See Id. at ¶ 10.

²² See Id. at ¶ 8.

1 encourage settlements and to expedite and facilitate trial.” Puerto v. Superior Court (2008) 158
 2 Cal. App. 4th 1242, 1249, citing Emerson Electric Co. v. Superior Court (1997) 16 Cal. 4th 1101,
 3 1107-8. The discovery procedures are also “designed to minimize the opportunities for fabrication
 4 and forgetfulness.” Puerto, supra, at 1249, citing Glenfed Development Corp. v. Superior Court
 5 (1997) 53 Cal. App. 4th 1113, 1119.

6 Plaintiff’s Special Interrogatory No. 1 requests the full name, last known address, and
 7 telephone number of each putative class member, and it is well within the scope of permissible
 8 discovery under California’s Civil Discovery Act. The information sought is highly relevant to
 9 each of the claims alleged in Plaintiff’s Class Action Complaint and his anticipated class
 10 certification motion as it would allow Plaintiff to gather information from putative class members
 11 in evaluating the widespread impact of Defendant’s wage and hour violations.

12 The names and contact information of potential percipient witnesses who shared factually
 13 similar circumstances with Plaintiff in their employment with Defendant is a crucial element in
 14 pre-certification discovery. It allows both of the parties equal access to additional facts underlying
 15 Plaintiff’s class allegations and allows putative class members to provide facts that were not
 16 necessarily documented or maintained by Defendant.

17 **1. California’s Civil Discovery Act Specifically Permits**
 18 **Plaintiff To Obtain The Requested Names And Contact Information.**

19 California’s Civil Discovery Act specifically deems Plaintiff’s requested information
 20 discoverable:

21 Discovery may relate to the claim or defense of the party seeking
 22 discovery or of any other party to the action. *Discovery may be*
 23 *obtained of the identity and location of persons having*
 24 *knowledge of any discoverable matter*, as well as of the existence,
 description, nature, custody, condition, and location of any
 document, tangible thing, or land or other property.

25 Cal. Civ. Proc. Code § 2017.010 (emphasis added).

26 Our discovery system is “founded on the understanding that parties use discovery to obtain
 27 names and contact information,” and “[c]entral to the discovery process is the identification of
 28 potential witnesses” for the purpose of further investigations. Puerto, supra, at 1249-50. The

1 “disclosure of the names and addresses of potential witnesses is a routine and essential part of
2 pretrial discovery.” Puerto, supra, at 1249-50, citing People v. Dixon (2007) 148 Cal. App. 4th
3 414, 443.

4 Certainly in drafting and approving California’s Civil Discovery Act, the legislature knew
5 that witnesses would have knowledge of discoverable facts necessary in the litigation of lawsuits,
6 particularly in putative class action lawsuits where such witnesses could be class members.
7 Therefore, contrary to Defendant’s objections, Plaintiff’s Special Interrogatory No. 1 does not
8 exceed his right to the discovery of putative class members’ names and contact information.
9 Plaintiff’s request is not only relevant to the alleged claims, it is specifically permitted by statute.

10 It would be unjust to allow only Defendant the right to utilize and monopolize this
11 essential mass of information which both of the parties require in the further investigation of class
12 allegations. Defendant’s refusal to provide the requested information is in blatant disregard of our
13 discovery system and serves to deliberately hinder use of the class action device.

14 **B. Defendant’s Boilerplate Objections Are Unsupported And Without Merit.**

15 Despite Plaintiff’s agreement to enter into a protective order and Plaintiff’s continual
16 efforts to informally resolve this issue, Defendant has failed to provide any responsive information
17 to Plaintiff’s Special Interrogatory No. 1. Defendant’s improper objections are discussed *infra*.

18 **1. Disclosure Of Putative Class Members’ Contact Information**
19 **Does Not Violate Privacy Rights.**

20 Defendant objects to providing the names and contact information of the putative class
21 members on the ground that it is protected by the right of privacy. Despite the Protective Order
22 into which the parties entered, Defendant continues to refuse to provide the requested information
23 on grounds of privacy.

24 Defendant also specifically objects to Plaintiff’s Special Interrogatory No. 1 under
25 California Civil Code section 1799.1. Under California Civil Code section 1799.1, Defendant, as a
26 business entity, shall not disclose any contents of its business records, unless the disclosure is
27 discoverable. Cal. Civ. Code § 1799.1(b)(2). Under California Code of Civil Procedure section
28 2017.010, “discovery may be obtained of the identity and location of persons having knowledge of

1 any discoverable matter.” Cal. Civ. Proc. Code § 2017.010. In that putative class members act as
2 percipient witnesses and can provide relevant facts to the class allegations, Plaintiff’s request for
3 the names and contact information of putative class members is not restricted under California
4 Civil Code section 1799.1.

5 Defendant has ignored the fact that the right of privacy is not an absolute bar to discovery.
6 Rather, courts balance the need for the information against the claimed privacy right. Ragge v.
7 MCA/Universal Studios (C.D. Cal. 1995) 165 F.R.D. 601, 604. Here, Plaintiff is entitled to
8 discover information in support of his anticipated motion for class certification, such as the names
9 and contact information of putative class members, each of whom is a percipient witness. This
10 interrogatory does not seek any personal, financial, proprietary, medical or privileged information.

11 In Belaire-West Landscape, Inc. v. Superior Court (Rodriguez) (2007) 149 Cal. App. 4th
12 554, 562, the court addressed the privacy concerns implicated by the disclosure of putative class
13 members’ phone numbers and addresses to plaintiff’s counsel in a wage and hour class action.
14 The court relied upon the privacy analysis set forth in the California Supreme Court case, Pioneer
15 Electronics (USA), Inc. vs. Superior Court (Olmstead) (2007) 40 Cal. 4th 360. According to
16 Pioneer, a court must examine (1) whether the claimant of the privacy right possesses a legally
17 protected privacy interest, (2) whether the claimant has a reasonable expectation of privacy, and
18 (3) whether the invasion of privacy is serious in nature, scope, and actual or potential impact. If a
19 claimant meets all of these criteria, the court must then balance the privacy interest against other
20 competing or countervailing interests. Belaire-West, supra, at 558-559.

21 Similar to Pioneer (where the putative class members consisted of individuals who had
22 complained to Pioneer that its DVD players were defective), the court in Belaire-West found that
23 although the current and former employees possessed a legally protected interest, the employees
24 did not have a reasonable expectation of privacy, given that current and former employees could
25 be reasonably expected to want their information disclosed to a class action plaintiff who might
26 ultimately recover for them unpaid wages which they were owed. The court reasoned that, just as
27 in Pioneer, “the information, while personal, was not particularly sensitive, as it was contact
28 information, not medical or financial details.” Belaire-West, supra, at 562.

1 Because there was no serious invasion of privacy, the Belaire-West court found that the
2 need to engage in a balancing of interests was obviated. Id. After engaging in a balancing
3 analysis, the court found that the balance of interests supported disclosure of the contact
4 information. Id. In reaching that conclusion, the court reasoned that the current and former
5 employees were potential percipient witnesses to the employer's employment and wage practices,
6 and as such their identities and locations were properly discoverable. Id. In addition, the court
7 found that the balancing of opposing interests tilted even more in favor of disclosure because the
8 case involved the fundamental public policy of ensuring the prompt payment of wages due to
9 employees. Id.

10 As in Belaire-West, Plaintiff here is merely requesting the names and contact information
11 of percipient witnesses to Defendant's wage and hour policies and practices. Also, similar to
12 Belaire-West, current and former employees can reasonably be expected to want their information
13 disclosed to a class action plaintiff who might ultimately recover for them unpaid wages which are
14 owed to them. Finally, like Belaire-West, Plaintiff here has requested only the names and contact
15 information of percipient witnesses, not medical or financial details. No serious invasion of
16 privacy would result from disclosure of the contact information for the purpose of litigating a
17 wage and hour putative class action. The need to engage in a balancing test is unnecessary.

18 Further supporting the production of names and contact information of putative class
19 members, the Court of Appeal for the Second Appellate District in Puerto, supra, stated, "the trial
20 court articulated no justification for placing in the hands of witnesses absolute and unreviewable
21 veto power over petitioner's access to contact information to permit them to pursue legitimate
22 discovery into their civil claims, and upon performing the appropriate privacy analysis we
23 perceive no basis for affording these witnesses' addresses and telephone numbers protections in
24 excess of those afforded to vastly more private consumer and employment records." Puerto,
25 supra, at 1259. The Court of Appeal overruled the trial court's decision and ordered the defendant
26 in that case to disclose the contact information of putative class members. Similarly, this Court
27 should order Defendant to provide substantive responses to Plaintiff's Special Interrogatory No. 1
28 and disclose the names and contact information of putative class members.

2. **The Uniform Trade Secrets Act Is Inapplicable To Plaintiff's Special Interrogatory No. 1.**

Defendant objects to Special Interrogatory No. 1 on the ground that it allegedly requests disclosure of confidential or competitively sensitive proprietary information that is privileged and protected from discovery by California Civil Code sections 3426, et seq. (Uniform Trade Secrets Act). Defendant does not provide authority for its objection that putative class members' names and contact information are properly defined under the Uniform Trade Secrets Act as either a "formula, pattern, compilation, program, device, method, technique, or process" in which it is "reasonable under the circumstances to maintain its secrecy." Cal. Civ. Code § 3246.1(d)(1)-(2).

Defendant's conclusory statement that the requested information derives independent economic value could easily apply to every piece of information exchanged through formal discovery in that such information could support Plaintiff's claims and anticipated motions. Defendant's argument would improperly classify all information in the process of formal discovery as a "trade secret" under Uniform Trade Secrets Act. This argument both misinterprets the protections under the Uniform Trade Secrets Act and contravenes the legislative purpose of the Civil Discovery Act.

Plaintiff's claims are brought in the context of a putative class action based on Defendant's violation of California's wage and hour laws and Unfair Competition laws. Plaintiff's putative class action does not allege claims related to Defendant's trade secrets, and this interrogatory does not seek information protected under the Uniform Trade Secrets Act. Rather, Plaintiff seeks to obtain properly discoverable information related to his wage and hour claims by requesting that Defendant provide the names and contact information of percipient witnesses and putative class members who serve as a necessary gateway to further investigation of the class allegations.

The information requested in Plaintiff's Special Interrogatory No. 1 is not protected under California's Uniform Trade Secrets Act, and Defendant's objection is without merit.

3. **A Request For The Names And Contact Information Of Putative Class Members Is Not Overly Broad, Unduly Burdensome, Nor Oppressive.**

Defendant further objects on the grounds that Plaintiff's Special Interrogatory No. 1 is overly broad, unduly burdensome and oppressive. Defendant's objections do not provide a basis to withhold the requested information.

In West Pico Furniture Co. of Los Angeles v. Superior Court (1961) 56 Cal. 2d 407, the plaintiff requested the names, addresses, duties, and dates pertaining to all employees who participated in various transactions between the parties. At issuance of a peremptory writ of mandate, the respondent court was required to vacate its order sustaining defendant's objections to specified interrogatories.

The California Supreme Court stated:

Oppression must not be equated with burden. The objection based upon *burden must be sustained by evidence showing the quantum of work required*, while to support an objection of *oppression* there *must be some showing either of an intent to create an unreasonable burden* or that the ultimate effect of the *burden is incommensurate with the result* sought...[There is] a legislative acknowledgement that some burden is inherent in all demands for discovery. The objection of burden is valid only when that burden is demonstrated to result in injustice.

West Pico Furniture Co., supra, at 417 (emphasis added).

Similarly here, Defendant failed to support its objections with any evidence to show the quantum of work required in providing substantive responses to Plaintiff's Special Interrogatory No. 1. Defendant also failed to support its objections with evidence that the interrogatory was allegedly oppressive. In fact, Defendant's response to Plaintiff's Special Interrogatory No. 1 was devoid of any supplemental documents pertaining to or providing grounds for its boilerplate objections. There is no indication of the alleged time or expense required of Defendant in providing the information requested in Plaintiff's Special Interrogatory No. 1. Indeed, contrary to Defendant's position, the requested information is readily ascertainable through Defendant's employment records.

1 Additionally, Defendant's conclusory statement that the interrogatory is overly broad
2 ignores Plaintiff's efforts to narrowly tailor Special Interrogatory No. 1. With regard to time, it is
3 limited to four years prior to the filing of the Complaint through the present. With regard to
4 geography, it is limited to the individuals employed by Defendant within the State of California.
5 With regard to classification, it is limited to employees who are or were classified as non-exempt
6 or hourly employees.

7 Defendant further objects that the request is overly broad because a contemplated
8 amendment to Plaintiff's Complaint to add claims would negate the need to exchange discovery to
9 support claims that have already been alleged. Despite Plaintiff's contemplated filing of an
10 amended complaint, the claims alleged in Plaintiff's current, operative Complaint are properly
11 pleaded and require additional facts from percipient witnesses and putative class members for
12 further investigation. In particular, where Defendant may fail to maintain records of rest breaks,
13 the violation of which is a claim properly alleged in the operative Complaint, the litigation of this
14 matter would benefit from the exchange of information retained by putative class members
15 regarding their work experience with Defendant. The potential amendment of the Complaint does
16 not permit Defendant to refuse compliance with California's Civil Discovery Act.

17 Defendant's boilerplate objections that Special Interrogatory No. 1 is overly broad, unduly
18 burdensome and oppressive are without merit.

19 **4. Plaintiff's Discovery Goes To Class Certification**
20 **And Is Not Premature.**

21 Defendant objects on the ground that Plaintiff's Special Interrogatory No. 1 is allegedly
22 premature. Ironically, Defendant prematurely "determined" that Plaintiff is not representative of
23 the entire class of employees he seeks to represent and is not entitled to a class list of those
24 employees. Additionally, Defendant fails to provide any support or authority with its objection
25 that the Court must first make a legal determination regarding the status of individuals as *putative*
26 class members prior to Plaintiff's request for the names and contact information for those
27 individuals.

1 This case has been fashioned as a class action, and Plaintiff must satisfy the requirements
 2 of California Code of Civil Procedure section 382, including “numerosity,” “typicality,”
 3 “commonality,” and “adequacy” in order for the court to grant class certification. If a purported
 4 class representative is not permitted to conduct certification-related discovery before the motion
 5 for certification, the class action device would cease to exist, which is a result contrary to public
 6 policy. See, e.g., Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal. 4th 319, 340
 7 (California has a “clear public policy . . . that is specifically directed at the enforcement of
 8 California’s minimum wage and overtime laws for the benefit of workers” and “a public policy
 9 which encourages the use of the class action device.”).

10 A plaintiff has an absolute right to conduct discovery on class certification issues. See
 11 Carabini v. Superior Court (1994) 26 Cal. App. 4th 239. Defendant’s objection to the adequacy of
 12 Plaintiff’s representation is an issue that is properly dealt with during a certification motion, not
 13 stated as an objection to Plaintiff’s Special Interrogatory No. 1. See Carabini, supra, at 244
 14 (“[E]ach party should have an opportunity to conduct discovery on class action issues before its
 15 documents in support of or in opposition to the motion must be filed.”). Given that Plaintiff is
 16 preparing for class certification and must establish numerosity, commonality, typicality, and
 17 adequate representation, the type of discovery sought here is authorized and permitted pre-
 18 certification discovery. See Hill v. Eddie Bauer (C.D. Cal. 2007) 242 F.R.D. 556, 562.

19 As a matter of law, Plaintiff is entitled to class certification discovery and the identities of
 20 class members prior to class certification. Pioneer, supra, 40 Cal. 4th at 373 (“contact information
 21 regarding the identity of potential class members is generally discoverable, so that the lead
 22 plaintiff may learn the names of other persons who might assist in prosecuting the case.”); Belaire-
 23 West, supra, 149 Cal. App. 4th at 561 (“[C]urrent and former [] employees [can] reasonably be
 24 expected to want their information disclosed to a class action plaintiff who may ultimately recover
 25 for them unpaid wages that they are owed.”). The information specifically sought here will
 26 establish whether there are common questions of law and fact that predominate the class claims.

27 Plaintiff’s Special Interrogatory No. 1 seeks the names and contact information of putative
 28 class members for the purpose of pursuing further investigation of the class allegations. Plaintiff’s

request is properly brought as part of pre-certification discovery, and it directly impacts Plaintiff's ability to establish typicality and commonality for class certification. Defendant's objections act to unilaterally prohibit Plaintiff's ability to pursue a class action, despite statutory and common law provisions, leaving only the option for each putative class member to separately pursue his or her own claims with individualized discovery requests.

Therefore, Defendant's objections are improper and further responses should be ordered.

5. Special Interrogatory No. 1 Is Not Compound, And Defendant Must Still Respond To The Extent Possible.

Defendant objects to Special Interrogatory No. 1 on the ground that it is compound; however, Plaintiff's interrogatory does not present a compound question by specifically indicating the type of information sought in Special Interrogatory No. 1, namely, putative class members' full names, last known addresses, and telephone numbers. By specifying the exact identifying information that Plaintiff seeks, Plaintiff has properly narrowed the scope of the interrogatory, and a complete response by Defendant would not result in inconsistent information. Notwithstanding its objection, the request is intelligible, and Defendant is still obligated to answer the interrogatory "to the extent possible." Cal. Civ. Proc Code § 2030.220(b).

Defendant's objection on the ground that Special Interrogatory No. 1 is compound is, therefore, without merit.

C. Defendant And Its Counsel Should Be Sanctioned For Abusing The Discovery Process.

California Code of Civil Procedure section 2030.300(d) (governing motions to compel responses to interrogatories) provides for mandatory imposition of monetary sanctions against any party who unsuccessfully opposes a motion to compel without substantial justification. Cal. Civ. Proc. Code sections 2030.300(d), 2031.320(b). Defendant and defense counsel have unreasonably withheld the discoverable information without providing any good cause or substantial justification. See, generally, Separate Statement in support of this Motion. Defendant and Defense counsel have yet to provide any further responses to Plaintiff's Special Interrogatory No. 1 and have made it clear that no such responses will be forthcoming without court intervention.

1 Defendant and its counsel's refusal to provide the requested information substantially prejudices
 2 Plaintiff by denying him the information necessary to move for class certification. Accordingly,
 3 and as further set forth in the accompanying Declaration of Linh Hua, Defendant and its counsel
 4 should be ordered to pay monetary sanctions in the amount of \$4,119.50 to reimburse Plaintiff for
 5 the costs and attorneys' fees incurred in bringing this motion.²³

6 **V. CONCLUSION**

7 For the foregoing reasons, Plaintiff respectfully requests that this Court compel Defendant
 8 to provide further substantive responses to Plaintiff's Special Interrogatory No. 1 and issue an
 9 order awarding monetary sanctions against Defendant and its attorneys of record, or any other
 10 relief this Court deems just and proper, pursuant to California Code of Civil Procedure section
 11 2030.300(d).

12
 13 Dated: April 22, 2008

Respectfully submitted,

INITIATIVE LEGAL GROUP, LLP

14
 15
 16 By: 

Marc Primo

Mónica Balderrama

Rebecca Labat

Linh Hua

Attorneys for Plaintiff Robert Acheson

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See Id. at ¶ 12-13.

1 Mark Yablonovich (SBN 186670)
Marc Primo (SBN 216796)
2 Mónica Balderrama (SBN 196424)
3 Rebecca Labat (SBN 221241)
Linh Hua (SBN 247419)
4 Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff ROBERT ACHESON

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
behalf of other members of the general public
13 similarly situated,

14 Plaintiff,

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**DECLARATION OF LINH HUA IN
SUPPORT OF PLAINTIFF'S MOTION TO
COMPEL DEFENDANT PRESIDIO
INTERNATIONAL, INC.'S FURTHER
RESPONSES TO SPECIAL
INTERROGATORIES, SET ONE**

Date: May 30, 2008

Time: 10:00 a.m.

Dept.: 7

DECLARATION OF LINH HUA

I, Linh Hua, declare as follows:

1. I am a member of the State Bar of California, duly admitted to practice law before this Court in the State of California. I am an attorney with the law firm Initiative Legal Group LLP ("ILG"), counsel for Plaintiff Robert Acheson ("Plaintiff"). Unless the context indicates otherwise, I have personal knowledge of the following facts, and if called as a witness, I could and would testify competently to them, without intending to waive any attorney-client privilege.

2. On January 28, 2008, Plaintiff served Defendant Presidio International, Inc. ("Defendant"), via U.S. Mail, with Special Interrogatories, Set One. Special Interrogatories, Set One, contained only Special Interrogatory No. 1, which requested the names and contact information for putative class members. A true and correct copy of Plaintiff's Special Interrogatories, Set One is attached as Exhibit "A."

3. On February 13, 2008, Defendant requested that Plaintiff enter into a protective order regarding discovery. In response to Defendant's request and in an effort to encourage the exchange of information and judicial economy, Plaintiff agreed to enter into a protective order.

4. On February 27, 2008, Plaintiff provided to Defendant a drafted Stipulation and [Proposed] Protective Order Concerning Discovery and Confidential Information ("Protective Order").

5. On March 3, 2008, Defendant served, via U.S. Mail, responses to Plaintiff's Special Interrogatories, Set One. Defendant's responses contained boilerplate objections and premature, unsupported determinations regarding class certification. A true and correct copy of Defendant Presidio International, Inc.'s Responses to Plaintiff's Special Interrogatories, Set One is attached as Exhibit "B."

6. On March 18, 2008, Defendant signed and agreed to the terms of the Protective Order. Plaintiff's counsel also contacted Defendant's counsel on March 18, 2008 for a scheduled telephonic meet and confer to discuss Defendant's objections to Special Interrogatory No. 1. During this meet and confer session, Defendant indicated that it would provide only the names and employee identification numbers of putative class members. Plaintiff did not agree that such

1 limited information was fully responsive to Special Interrogatory No. 1, and it would not allow for
2 Plaintiff to gather essential information during pre-certification discovery. Plaintiff expressed that
3 a motion to compel further responses would be filed should Defendant refuse to provide fully
4 substantive responses.

5 7. On March 25, 2008, pursuant to its earlier agreement, Plaintiff lodged Protective
6 Order for both parties. The Protective Order was signed by the Honorable Mary Jo Levinger on
7 March 28, 2008 and entered on April 1, 2008. A true and correct copy of the Stipulation and
8 Protective Order Concerning Discovery and Confidential Information is attached as Exhibit "C."

9 8. On April 2, 2008, Plaintiff sent a letter to Defendant providing a thorough analysis
10 of the legal authorities governing Plaintiff's entitlement to information sought in Special
11 Interrogatory No. 1. A true and correct copy of the Plaintiff's April 2, 2008 letter is attached as
12 Exhibit "D." Plaintiff asked that Defendant supplement its meritless objections with substantive
13 responses by April 9, 2008. Defendant did not, and has not, provided any substantive responses to
14 Plaintiff's Special Interrogatory No. 1.

15 9. On April 17, 2008, counsel for both parties discussed via telephone their respective
16 positions of Defendant's response to Plaintiff's Special Interrogatory No. 1. Defendant continued
17 to hold its position that it would not provide the contact information of putative class members. It
18 was also confirmed during that conversation that Defendant would be available on May 30, 2008
19 for a hearing on this Motion.

20 10. On April 17, 2008, Defendant faxed a letter responding to Plaintiff's April 2, 2008
21 letter. A true and correct copy of the Defendant's April 17, 2008 letter is attached as Exhibit "E."
22 In that letter, Defendant reiterates its position that it is unwilling to provide the information
23 requested in Plaintiff's Special Interrogatory No. 1.

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1 11. Plaintiff now requests the Court's intervention and order for Defendant to produce
2 the names and contact information of putative class members, in response to Special Interrogatory,
3 Set One, No. 1.

12. I spent approximately 7 hours meeting and conferring regarding the discovery at issue, performing legal research, and preparing this Motion and all supporting papers. I anticipate spending another 2.5 hours preparing any reply papers and attending the hearing of this Motion. My billable rate is \$290 per hour. Mónica Balderrama, the partner on the case, has a billable rate of \$495 per hour. She spent approximately 1 hour reviewing and revising this Motion and all supporting papers. It is anticipated that she will spend another .5 hours reviewing and revising any reply papers. Rebecca Labat, my direct supervising attorney, has a billable rate of \$390 per hour. She spent approximately .8 hours reviewing and revising this Motion and all supporting papers. The costs accrued in preparing and filing this Motion is approximately \$150. It is anticipated that an additional \$ 160 will accrue for preparing any reply and attending the hearing of this Motion.

15 13. Accordingly, Defendant and Defense Counsel should be ordered to pay monetary
16 sanctions in the amount of \$4,119.50 to reimburse Plaintiff for the costs and attorneys' fees
17 incurred and anticipated in bringing this Motion.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed this 22 day of April, 2008, at Los Angeles, California.

21
22


Linh Hua

EXHIBIT A

1 Mark Yablonovich (SBN 186670)
 Marc Primo (SBN 216796)
 2 Mónica Balderrama (SBN 196424)
 Rebecca Labat (SBN 221241)
 3 Linh Hua (SBN 247419)
 Initiative Legal Group LLP
 4 1800 Century Park East, 2nd Floor
 Los Angeles, California 90067
 5 Telephone: (310) 556-5637
 6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff ROBERT ACHESON

8

9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

FOR THE COUNTY OF LOS ANGELES

11

ROBERT ACHESON, individually, and on
 12 behalf of other members of the general public
 similarly situated,

13

Plaintiff,

14

15 vs.

16

G.A.L.A., INC., a Delaware corporation;
 GIORGIO ARMANI CORPORATION, a
 17 New York corporation; PRESIDIO
 INTERNATIONAL, INC., a Delaware
 18 Corporation; and DOES 1 through 10,
 19 inclusive,

19

20 Defendants.

20

Case No. 107 CV 099461

CLASS ACTION

PLAINTIFF'S SPECIAL
 INTERROGATORIES, SET ONE

Complaint Filed: November 21, 2007

21

22

PROPOUNDING PARTY: PLAINTIFF ROBERT ACHESON

23

RESPONDING PARTY: DEFENDANT PRESIDIO INTERNATIONAL, INC.

24

SET NO: ONE

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TO DEFENDANT PRESIDIO INTERNATIONAL, INC. AND TO ITS ATTORNEYS

27

OF RECORD:

28

1 PLAINTIFF ROBERT ACHESON ("Plaintiff") hereby requests that DEFENDANT
 2 PRESIDIO INTERNATIONAL, INC. respond fully, separately, and under oath, pursuant to the
 3 provisions of California Code of Civil Procedure section 2030.210, to the following Special
 4 Interrogatory within thirty (30) days after service.

5 **SPECIAL INTERROGATORY NO. 1:**

6 Provide the full name, last known address, and telephone numbers of each and every
 7 COVERED EMPLOYEE who was employed by PRESIDIO INTERNATIONAL, INC. during the
 8 RELEVANT TIME PERIOD. For purposes of this interrogatory, the term "COVERED
 9 EMPLOYEE" means and refers to all non-exempt or hourly persons employed by PRESIDIO
 10 INTERNATIONAL, INC. in the State of California at any time during the period commencing
 11 four (4) years prior to the filing of the COMPLAINT to present; the term "PRESIDIO
 12 INTERNATIONAL, INC." means and refers to defendant PRESIDIO INTERNATIONAL, INC.
 13 and any of its parents, subsidiaries, successors and predecessors, directors, officers, agents,
 14 investigators, personnel and employees; the term "COMPLAINT" means and refers to Plaintiff's
 15 Complaint filed in this action on November 11, 2007; the term "RELEVANT TIME PERIOD"
 16 means and refers to the period of time commencing four (4) years prior to the filing of the
 17 COMPLAINT to the present.

18

19 Dated: January 28, 2008

Respectfully submitted,

Initiative Legal Group LLP

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By: 

23

Mark Yablonovich

24

Marc Primo

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Mónica Balderrama

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Rebecca Labat

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Linh Hua

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Attorneys for Plaintiff Robert Acheson

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On January 28, 2008, I served the within document(s) described below as:

PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes address as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105

- (X) MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () PERSONAL: I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- () OVERNIGHT COURIER: I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- () FACSIMILE: I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- () ELECTRONIC MAIL: By agreement.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on January 28, 2008, at Los Angeles, California.



Karen Acio

EXHIBIT B

1 JOANNA L. BROOKS (SBN 182986)
2 TIMOTHY C. TRAVELSTEAD (SBN 215260)
3 PUNAM SARAD (SBN 217091)
4 JACKSON LEWIS LLP
5 199 Fremont Street, 10th Floor
6 San Francisco, CA 94105
7 Telephone 415.394.9400
8 Facsimile: 415.394.9401

9 Attorneys for Defendant
10 PRESIDIO INTERNATIONAL, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ROBERT ACHESON, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

G.A.L.A., INC., a Delaware corporation;
GIORGIO ARMANI CORPORATION, a New
York corporation; PRESIDIO
INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 107 CV 099461

**DEFENDANT PRESIDIO
INTERNATIONAL, INC.'S
RESPONSES TO PLAINTIFF'S
SPECIAL INTERROGATORIES, SET
ONE**

Complaint Filed: November 21, 2007
Trial Date: None Set

PROPOUNDING PARTY: Plaintiff ROBERT ACHESON

RESPONDING PARTY: Defendant PRESIDIO INTERNATIONAL, INC.

SET NUMBER: One

Comes now Defendant PRESIDIO INTERNATIONAL, INC. ("DEFENDANT") and
responds to Plaintiff's Special Interrogatories, Set Number One as follows:

GENERAL OBJECTIONS

Responding Party objects to these interrogatories on the following grounds:

1. Responding Party has not completed its investigation of the facts of this case and

1 has not completed discovery in this action. Therefore, all responses contained herein are based
2 only upon such information and documents as are presently available to and specifically known to
3 Responding Party, and relate only to those documents and information which are presently in
4 Responding Party's possession and control. Responding Party specifically anticipates further
5 discovery, independent investigation and research which will supply additional facts and
6 documents, some of which may be responsive to these Interrogatories. The following responses
7 are given without prejudice to Responding Party's right to introduce subsequently discovered
8 evidence at the trial of this action and objects to these interrogatories to the extent that it purports
9 to demand otherwise.

10 2. Responding Party objects to these Interrogatories to the extent that they may be
11 construed to call for information or documents protected by the attorney-client privilege, the work
12 product doctrine, or any other applicable privilege or right of privacy. In particular, and without
13 limitation, Responding Party will not furnish any documents or information constituting or
14 reflecting the mental impressions, conclusions, opinions, legal theories, or other work product of
15 counsel, constituting, containing, or concerning communications between or among counsel,
16 Responding Party and its consultants, or prepared in anticipation of or for use in this litigation.

17 3. Responding Party objects to these Interrogatories to the extent that the
18 interrogatory is burdensome, oppressive, onerous, argumentative, vague, ambiguous, overly
19 broad, or constitutes an abuse of the discovery process.

20 4. Responding Party objects to these Interrogatories to the extent that the
21 interrogatory is compound, complex, and/or unintelligible.

22 5. Responding Party objects to these Interrogatories to the extent that the
23 interrogatory is unduly burdensome in light of the cost to investigate and respond to the
24 propounded interrogatory.

25 6. Responding Party objects to these Interrogatories to the extent that the
26 interrogatory calls for a legal conclusion.

27 7. Responding Party objects to these Interrogatories to the extent that the
28 interrogatory seeks information which is within the possession or control of Propounding Party or

1 its agents or employees, or which is equally or more accessible to Propounding Party than to
2 Responding Party.

3 8. Responding Party objects to these Interrogatories to the extent that the
4 interrogatory may necessitate the preparation or the making of a compilation, abstract, audit, or
5 summary of or from documents which Responding Party has produced to Propounding Party, and
6 as such need not be answered. Responding Party also objects to these Interrogatories to the extent
7 that it requires Responding Party to prepare summaries or compilations of information already
8 made available through production of documents or any other means.

9 9. Responding Party objects to certain interrogatories on the grounds that it has made
10 or will make a substantial volume of materials available to Propounding Party, and as a result, the
11 information sought in the interrogatories is equally available to Propounding Party.

12 10. In responding to these Interrogatories at this time, Responding Party does not
13 concede the relevancy or materiality of these interrogatories or the subject matter to which it
14 refers. Each and every response by this Respondent is subject to, and does not waive; (1) all
15 objections as to the competency, confidentiality, materiality, privilege, or admissibility as
16 evidence or for any other purpose, of any of the answers given, or the subject matter thereof, in
17 any subsequent proceeding, including the trial of this action or any other action; and (2) the right
18 to object to any discovery proceedings involving or related to the subject matter of the
19 Interrogatories, whether or not such objections are separately set forth.

20 11. Responding Party further objects on the grounds that this first set of Interrogatories
21 is extraordinarily burdensome and oppressive.

22 12. Responding Party objects to these Interrogatories to the extent that it requires
23 speculation as to specific knowledge held by any former employees, which information is
24 normally, and will be in this case, developed through further discovery.

25 13. Responding Party objects to these Interrogatories to the extent it purports to seek
26 the identification of each and every person who might conceivably have information that is
27 relevant to each interrogatory.

28 ///

SPECIAL INTERROGATORY NO. 1:

Provide the full name, last known address, and telephone numbers of each and every COVERED EMPLOYEE who was employed by PRESIDIO INTERNATIONAL, INC., during the RELEVANT TIME PERIOD. For purposes of this interrogatory, the term "COVERED EMPLOYEE" means and refers to all non-exempt or hourly persons employed by PRESIDIO INTERNATIONAL, INC., in the State of California at any time during the period commencing four (4) years prior to the filing of the COMPLAINT to present; the term "PRESIDIO INTERNATIONAL, INC." means and refers to defendant PRESIDIO INTERNATIONAL, INC. and any of its parent, subsidiaries, successors and predecessors, directors, officers, agents, investigators, personnel and employees; the term "COMPLAINT" means and refers to Plaintiff's Complaint filed in this action on November 11, 2007; the term "RELEVANT TIME PERIOD" means and refers to the period of time commencing four (4) years prior to the filing of the COMPLAINT to the present.

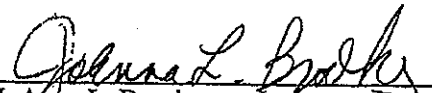
RESPONSE TO SPECIAL INTERROGATORY NO. 1:

DEFENDANT objects to this request on the grounds that it is overly broad, unduly burdensome and oppressive to the extent Plaintiff seeks information regarding individuals who have yet to be recognized by this Court as putative class members. DEFENDANT further objects to this request on the grounds that it is compound. DEFENDANT further objects to this request to the extent it calls for the disclosure of confidential or competitively sensitive proprietary information that is privileged and protected from discovery or information protected from disclosure by California Civil Code Section 3426 et seq. DEFENDANT further objects to this Request to the extent it seeks information the release of which would be a violation of any individual's right of privacy under Article I, Section 1 of the California Constitution, or Section 1799.1 of the California Civil Code, or any other constitutional, statutory or common law right of privacy of any person. DEFENDANT further objects to this request on the grounds it is premature. Plaintiff is not entitled to a class list consisting of all non-exempt or hourly persons employed by PRESIDIO INTERNATIONAL, INC., in the State of California at any time during the period commencing four (4) years prior to the filing of the COMPLAINT to present. Plaintiff

1 is not representative of the entire class of employees he seeks to represent.

2 Dated: March 3, 2008

JACKSON LEWIS LLP

3
4 By: 
5 Joanna L. Brooks
6 Attorneys for Defendant
7 PRESIDIO INTERNATIONAL, INC.
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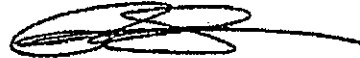
VERIFICATION

I, Rich Stanley, declare:

I am Senior Director of Store Operations for Presidio International, Inc. in the above-entitled action. I have read the foregoing DEFENDANT PRESIDIO INTERNATIONAL, INC.'S RESPONSES TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET NO. ONE and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at 111 8th Ave., NY., New York on the 27th day of February, 2008.



Rich Stanley
Senior Director of Store Operations
Presidio International, Inc.

PROOF OF SERVICE

I, JoAnna L. Brooks, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On March 3, 2008, I served the attached document(s):

**DEFENDANT PRESIDIO INTERNATIONAL INC.'S
RESPONSES TO PLAINTIFF'S FIRST SET OF SPECIAL
INTERROGATORIES**

in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Mark Yablonovich, Esq.
Marc Primo, Esq.
Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
Los Angeles, CA 90067
Telephone: (310)556-5637

☒ BY MAIL: United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

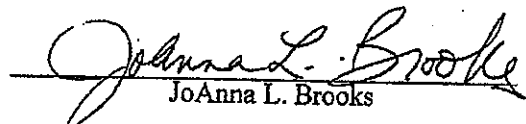
☐ BY HAND DELIVERY: I caused such envelope(s) to be delivered by Messenger Service to the above address.

☐ BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address within 24 hours by OVERNIGHT EXPRESS service.

☒ BY FACSIMILE: I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 3, 2008 at San Francisco, California.


JoAnna L. Brooks

H:\A\AX Armani 41720\Acheson, Robert (118276)\Discovery\Presidio's response to plaintiff's SPROGS (1).doc

EXHIBIT C

Mar 26 08 10:39a

p.3

(ENDORSED)
FILED

APR - 1 2008

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY Lisa Wilson DEPUTY

1 INITIATIVE LEGAL GROUP LLP
 2 Mark Yablonovich (SBN 186670)
 3 Marc Primo (SBN 216796)
 4 Mónica Balderrama (SBN 196424)
 5 Rebecca Labat (SBN 221241)
 6 Linh Hua (SBN 247419)
 7 Initiative Legal Group LLP
 8 1800 Century Park East, 2nd Floor
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 10 Telephone: (310) 556-5637
 11 Facsimile: (310) 861-9051
 12 1800 Century Park East, 2nd Floor
 13 Los Angeles, California 90067
 14 Telephone: (310) 556-5637
 15 Facsimile: (310) 861-9051.

16 Attorneys for Plaintiff

17 JACKSON LEWIS LLP
 18 JoAnna L. Brooks (SBN 182986)
 19 199 Fremont Street, 10th Floor
 20 San Francisco, California 94105
 21 Telephone: (415) 394-9400
 22 Facsimile: (415) 394-9401.

23 Attorneys for Defendants

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 25 **FOR THE COUNTY OF SANTA CLARA**

26 ROBERT ACHESON; individually, and on
 27 behalf of other members of the general public
 28 similarly situated,

Plaintiff,

vs.

29 G.A.L.A., INC., a Delaware corporation;
 30 GIORGIO ARMANI CORPORATION, a New
 31 York corporation; PRESIDIO
 32 INTERNATIONAL, INC., a Delaware
 33 Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 107 CV 099461

CLASS ACTION

**STIPULATION AND [PROPOSED]
 PROTECTIVE ORDER CONCERNING
 DISCOVERY AND CONFIDENTIAL
 INFORMATION**

-1-

STIPULATION AND PROTECTIVE ORDER

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p.4

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action will likely involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
5 Furthermore, the parties desire to memorialize their agreement regarding inadvertent production of
6 privileged materials and/or materials protected by the attorney work product doctrine.
7 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated
8 Protective Order. The parties acknowledge, as set forth in Section 10, below, that this Stipulated
9 Protective Order creates no entitlement to file confidential information under seal.

10 2. DEFINITIONS

11 2.1 Party: any party to this action, including all of its officers, directors,
12 employees, consultants, retained experts, and outside counsel (and their support staff).

13 2.2 Disclosure or Discovery Material: all items or information, regardless of the
14 medium or manner generated, stored, or maintained (including, among other things, documents,
15 electronic data, testimony, transcripts, or tangible things) that are produced or generated in
16 disclosures or responses to discovery in this matter.

17 2.3 Confidential Information or Items: information (regardless of how
18 generated, stored or maintained) or tangible things that (a) reveal confidential and/or proprietary
19 information regarding Defendant, or its parent or affiliates; and/or (b) reveal personal, identifying
20 and/or confidential information about any third party, including such types of information as are
21 protected by the California constitutional right of privacy; and/or (c) reveal information that
22 pertains in any way to allegations of employee misconduct of any manner on the part of Plaintiff;
23 and/or (d) reveal personal, medical and/or financial information about any Party.

24 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 2.5 Producing Party: a Party or non-party that produces Disclosure or
27 Discovery Material in this action.

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-2-

STIPULATION AND PROTECTIVE ORDER

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p.5

1 2.6 Designating Party: a Party or non-party that designates information or items
2 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

3 2.7 Privileged Material: all items or information, or portions of items or
4 information, regardless of the medium or manner generated, stored, or maintained (including,
5 among other things, testimony, transcripts, or tangible things) that are produced or generated in
6 disclosures or responses to discovery in this matter that are subject the attorney-client privilege
7 and/or the attorney work product doctrine.

8 2.8 Protected Material: any Disclosure or Discovery Material that is designated
9 as "CONFIDENTIAL."

10 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
11 retained to represent or advise a Party in this action (as well as their internal support staffs).

12 2.10 House Counsel: attorneys who are employees of a Party (as well as their
13 internal support staffs).

14 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
15 their support staffs).

16 2.12 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
18 witness or as a consultant in this action. This definition includes a professional jury or trial
19 consultant retained in connection with this litigation.

20 2.13 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
22 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
23 subcontractors.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also any information copied or extracted therefrom, as well as all
27 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
28 presentations by parties or counsel to or in court or in other settings that might reveal Protected

-3-

STIPULATION AND PROTECTIVE ORDER

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1 Material.

2 4. DURATION

3 Even after the termination of this litigation, the confidentiality obligations imposed
4 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
5 order otherwise directs.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
8 Party or non-party that designates information or items for protection under this Order must take
9 care to limit any such designation to specific material that qualifies under the appropriate
10 standards. Mass, indiscriminate, or routinized designations are prohibited.

11 If it comes to a Party's or a non-party's attention that information or items that it
12 designated for protection do not qualify for protection at all, or do not qualify for the level of
13 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
14 withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this
16 Order (*see, e.g.,* second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
17 material that qualifies for protection under this Order must be clearly so designated before the
18 material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (apart from transcripts of
21 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
22 "CONFIDENTIAL" at the top, bottom or right margin of each page that contains protected
23 material or, alternatively, on the first page of a multi-page document, if the entire document is
24 protected. If only a portion or portions of the material on a page qualifies for protection, the
25 Producing Party should endeavor to identify the protected portion(s) (*e.g.,* by making appropriate
26 markings in the margins) and specify, for each portion, the level of protection being asserted
27 (either "CONFIDENTIAL").

28 A Party or non-party that makes original documents or materials available for

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STIPULATION AND PROTECTIVE ORDER

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1 inspection need not designate them for protection until after the inspecting Party has indicated
2 which material it would like copied and produced. During the inspection and before the
3 designation, all of the material made available for inspection shall be deemed
4 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and
5 produced, the Producing Party must determine which documents, or portions thereof, qualify for
6 protection under this Order, then, before producing the specified documents, the Producing Party
7 must affix the legend "CONFIDENTIAL" at the top, bottom or right margin of each page that
8 contains Protected Material. If only a portion or portions of the material on a page qualifies for
9 protection, the Producing Party also should endeavor to identify the protected portion(s) (e.g., by
10 making appropriate markings in the margins).

11 (b) for testimony given in deposition or in other pretrial or trial
12 proceedings, that the Party or non-party offering or sponsoring, or giving the testimony identify on
13 the record, before the close of the deposition, hearing, or other proceeding, all protected testimony,
14 and further specify any portions of the testimony that qualify as "CONFIDENTIAL." When it is
15 impractical to identify separately each portion of testimony that is entitled to protection, and when
16 it appears that substantial portions of the testimony may qualify for protection, the Party or non-
17 party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition
18 or proceeding is concluded) a right to, during the time allocated for the witness to review and
19 execute the deposition transcript, identify the specific portions of the testimony as to which
20 protection is "CONFIDENTIAL" during this review period.

21 Transcript pages containing Protected Material must be separately bound by the
22 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as
23 instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

24 (c) for information produced in some form other than documentary, and
25 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
26 the container or containers in which the information or item is stored the legend
27 "CONFIDENTIAL." If only portions of the information or item warrant protection, the Producing
28 Party, to the extent practicable, should identify the protected portions.

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STIPULATION AND PROTECTIVE ORDER

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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
2 to designate qualified information or items as "CONFIDENTIAL" does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such material. If material is
4 appropriately designated as "CONFIDENTIAL" after the material was initially produced, the
5 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
6 that the material is treated in accordance with the provisions of this Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
9 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
10 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
11 waive its right to challenge a confidentiality designation by electing not to mount a challenge
12 promptly after the original designation is disclosed.

13 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
14 Party's confidentiality designation must do so in good faith and must begin the process by
15 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
16 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
17 for its belief that the confidentiality designation was not proper and must give the Designating
18 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
19 change in designation is offered, to explain the basis for the chosen designation. A challenging
20 Party may proceed to the next stage of the challenge process only if it has first engaged in this
21 meet and confer process.

22 6.3 Judicial Intervention. A Party that elects to press a challenge to a
23 confidentiality designation after considering the justification offered by the Designating Party may
24 file and serve a motion that identifies the challenged material and sets forth in detail the basis for
25 the challenge. Each such motion must be accompanied by a competent declaration that affirms
26 that the movant has complied with the meet and confer requirements imposed in the preceding
27 paragraph and that sets forth with specificity the justification for the confidentiality designation
28 that was given by the Designating Party in the meet and confer dialogue. Because the burden of

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1 establishing the appropriateness of the confidentiality designation ultimately falls on the
2 Designating Party, in the event that the challenging party files and serves a reply brief in support
3 of its motion, the Designating Party shall, unless otherwise ordered, be entitled to file and serve a
4 sur-reply brief of the same length permitted for reply briefs.

5 Until the court rules on the challenge, all parties shall continue to afford the
6 material in question the level of protection to which it is entitled under the Producing Party's
7 designation.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is
10 disclosed or produced by another Party or by a non-party in connection with this case only for
11 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in this Order. When
13 the litigation has been terminated, a Receiving Party must comply with the provisions of section
14 11, below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons authorized under
17 this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
20 disclose any information or item designated CONFIDENTIAL only to:

- 21 (a) the Receiving Party's Counsel in this action;
- 22 (b) the officers, directors, and employees of the Receiving Party to
23 whom disclosure is reasonably necessary for this litigation;
- 24 (c) experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this litigation;
- 26 (d) the Court and its personnel;
- 27 (e) court reporters, their staffs, and professional vendors to whom
28 disclosure is reasonably necessary for this litigation;

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STIPULATION AND PROTECTIVE ORDER

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1 (f) during their depositions, witnesses in the action to whom disclosure
2 is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that
3 reveal Protected Material must be separately bound by the court reporter and may not be disclosed
4 to anyone except as permitted under this Stipulated Protective Order; or

5 (g) the author of the document or the original source of the information.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION

8 If a Receiving Party is served with a subpoena or an order issued in other litigation
9 that would compel disclosure of any information or items designated in this action as
10 "CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by fax,
11 if possible) immediately and in no event more than three court days after receiving the subpoena
12 or order. Such notification must include a copy of the subpoena or court order.

13 The Receiving Party also must immediately inform in writing the party who caused
14 the subpoena or order to issue in the other litigation that some or all the material covered by the
15 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
16 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that
17 caused the subpoena or order to issue.

18 The purpose of imposing these duties is to alert the interested parties to the
19 existence of this Protective Order and to afford the Designating Party in this case an opportunity to
20 try to protect its confidentiality interests in the court from which the subpoena or order issued.
21 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
22 of its confidential material and nothing in these provisions should be construed as authorizing or
23 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

24 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this Stipulated
27 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
28 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected

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STIPULATION AND PROTECTIVE ORDER

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1 Material, and (c) inform the person or persons to whom unauthorized disclosures were made of all
2 the terms of this Order.

3 10. FILING PROTECTED MATERIAL

4 Without written permission from the Designating Party or a court order secured
5 after appropriate notice to all interested persons, a Party may not file in the public record in this
6 action any Protected Material.

7 11. PRIVILEGED MATERIAL

8 The parties shall be permitted but not obligated to review materials for privilege
9 and/or work product protection prior to producing them in this matter. If a Producing Party
10 discovers that it has produced Privileged Material, it may notify the Receiving Party, which will
11 promptly destroy or return all copies of such Privileged Material. Furthermore, if the Receiving
12 Party has already disclosed the Privileged Materials prior to receiving this notice, the Receiving
13 Party must take reasonable steps to retrieve the materials or ensure their destruction. Unless
14 otherwise agreed by the parties in writing, no party shall be permitted to retain Privileged
15 Materials after receiving notification under this section, even if the parties dispute the privilege
16 and/or work product status of the materials. If the parties subsequently agree or the Court orders
17 that such materials should be disclosed, the Producing Party will produce new copies of the
18 materials.

19 12. FINAL DISPOSITION

20 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
21 days after the final termination of this action, each Receiving Party must return all Protected
22 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all
23 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
24 the Protected Material. With permission in writing from the Designating Party, the Receiving
25 Party may destroy some or all of the Protected Material instead of returning it. Whether the
26 Protected Material is returned or destroyed, the Receiving Party must submit a written certification
27 to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty
28 day deadline that identifies (by category, where appropriate) all the Protected Material that was

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STIPULATION AND PROTECTIVE ORDER

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1 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
3 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
4 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
5 even if such materials contain Protected Material. Any such archival copies that contain or
6 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
7 (DURATION), above.

8 13. MISCELLANEOUS

9 13.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

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STIPULATION AND PROTECTIVE ORDER

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1 13.2 Right to Assert Other Objections. By stipulating to the entry of this
 2 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 3 producing any information or item on any ground not addressed in this Stipulated Protective
 4 Order. Similarly, no Party waives any right to object on any ground to use of any of the material
 5 covered by this Protective Order at trial, in evidence or otherwise.

6
 7 Respectfully submitted,

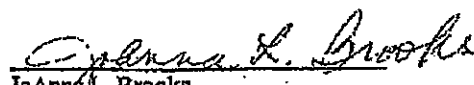
8 *March*
 9 Dated: ~~February~~ 25, 2008

Initiative Legal Group LLP

10 
 11 Marc Primo
 12 Mónica Balderrama
 13 Rebecca Labat
 14 Linh Hua
 15 Attorneys for Plaintiff


16 *March*
 17 Dated: ~~February~~ 18, 2008

Jackson Lewis LLP

18 
 19 JoAnna L. Brooks
 20 Attorneys for Defendant

21 ORDER

22 Good cause appearing, IT IS HEREBY ORDERED, *This order does not*
 23 *Waive Compliance with Rule 2.550+2.551*
 24 Dated: 3/28, 2008

25 
 26 The Honorable Mary Jo Levinger
 27 Judge of the Superior Court of California
 28

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 STIPULATION AND PROTECTIVE ORDER

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On March 26, 2008, I served the within document(s) described below as:

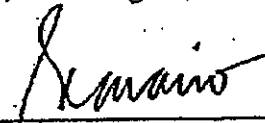
**STIPULATION AND [PROPOSED] PROTECTIVE ORDER CONCERNING
DISCOVERY AND CONFIDENTIAL INFORMATION**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes address as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- (X) MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
() PERSONAL: I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
() OVERNIGHT COURIER: I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
(X) FACSIMILE: I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
() ELECTRONIC MAIL: By agreement.
(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on March 26, 2008, at Los Angeles, California.



Karen Acio

PROOF OF SERVICE

EXHIBIT D



INITIATIVE LEGAL GROUP LLP

LINH HUA
310.556.5637 Main
L.Hua@InitiativeLegal.com

April 2, 2008

VIA U.S. MAIL AND FACSIMILE (415.394.9401)

JoAnna L. Brooks
Jackson Lewis LLP
199 Fremont Street, 10th Floor
San Francisco, California 94105

Subject: Acheson v. G.A.L.A., Inc, et al.

Dear Ms. Brooks,

This letter is intended to continue our meet and confer efforts to resolve the dispute over Defendant Presidio International, Inc.'s ("Defendant") objections and response to Plaintiff's Special Interrogatory No. 1, seeking the names and contact information of prospective class members.

During our last telephonic meet and confer session on March 18, 2008, Defendant agreed to provide the full names and employee identification numbers for all individuals for whom Plaintiff Robert Acheson ("Plaintiff") had requested the contact information. However, merely providing the names and employee identification numbers of prospective class members is both an incomplete response to our interrogatory and insufficient information for Plaintiff to gather essential evidence to which he is entitled during pre-certification discovery.

I. SPECIAL INTERROGATORY NO. 1

Plaintiff's Special Interrogatory, No. 1 requests that Defendant provide the full name, last known address, and telephone number of each and every non-exempt or hourly person employed by Defendant in the State of California at any time during the period commencing four years prior to the filing of the Complaint to the present.

Defendant makes a number of boilerplate objections and, as such, Defendant's response is inadequate. Plaintiff, therefore, requests that Defendant supplement its response to Special Interrogatory No. 1.

A. Objections Based Upon Overly Broad, Unduly Burdensome, and Oppressive Grounds Are Insufficient to Not Provide A Substantive Response.

Defendant objects to Special Interrogatory No. 1 on the grounds that it is overly broad, unduly burdensome and oppressive to the extent Plaintiff seeks information regarding individuals who have yet to be recognized by this Court as putative class members. First, Defendant has failed to provide any support for its objection that the interrogatory is overly broad on its face. Instead, Defendant makes only a conclusory statement that the interrogatory is overly broad. In fact, the interrogatory is narrow in scope. With regard to time, it is limited to four years prior to the filing of the Complaint through the present. With regard to geography, it is limited to the individuals employed by Defendant within the State of California. With regard to classification, it is limited to employees who are or were classified as non-exempt or hourly employees.

Defendant also has failed to provide any support for its objection that an adequate, substantive response to this interrogatory would be unduly burdensome or oppressive. See Columbia Broadcasting System, Inc. v. Superior Court (1968) 263 Cal. App. 2d 12, 19 (noting that in determining whether the burden is unjust, a weighing process is required where the amount of work is so great and the utility of the information sought so minimal that it would defeat the ends of justice to require the responding party to answer). This boilerplate objection does not demonstrate that the estimated time or expense involved in responding to Plaintiff's interrogatory is unreasonable.

Furthermore, Defendant fails to provide any support that such discovery is restricted prior to a legal determination by the Court that certain individuals are considered *putative* class members. Plaintiff's Class Action Complaint includes class allegations and is brought as a putative class action; therefore, Plaintiff is entitled to pre-certification discovery. Defendant has not provided authority to support otherwise.

Defendant's boilerplate objections that Special Interrogatory No. 1 is overly broad, unduly burdensome and oppressive are, therefore, without merit.

B. Special Interrogatory No. 1 is Not Compound.

Defendant objects to Special Interrogatory No. 1 on the ground that it is compound; however, Plaintiff's interrogatory does not present a compound question by specifically requesting putative class members' full names, last known addresses, and telephone numbers. By specifying the exact identifying information that Plaintiff seeks, Plaintiff has properly narrowed the scope of the interrogatory, and a complete response by Defendant would not result in inconsistent information. Notwithstanding its objection, Defendant is still obligated to answer the interrogatory to the extent possible.

Defendant's objection on the ground that Special Interrogatory No. 1 is compound is, therefore, without merit.

C. Defendant's Objection Based Upon Privilege Under the Uniform Trade Secrets Act is Inapplicable.

Defendant objects to Special Interrogatory No. 1 on the grounds that it allegedly requests disclosure of confidential or competitively sensitive proprietary information that is privileged and protected from discovery by California Civil Code Section 3426, et seq. (Uniform Trade Secrets Act). However, Defendant does not explain or provide support for its objection that the Uniform Trade Secrets Act protects against disclosure of putative class members' full names, last known addresses, and telephone numbers.

Plaintiff's claims are brought in the context of a putative class action for Defendant's violation of California's wage and hour laws and Unfair Competition laws. Plaintiff's putative class action does not bring forth claims related to Defendant's trade secrets and this interrogatory does not seek information protected under the Uniform Trade Secrets Act. Rather, Plaintiff seeks to obtain evidence directly related to his wage and hour claims by requesting that Defendant provide putative class members' full names, last known addresses, and telephone numbers.

Defendant's objection that Special Interrogatory No. 1 is covered by the Uniform Trade Secrets Act is, therefore, without merit.

D. Boilerplate Privacy Objection Is An Insufficient Basis to Refuse to Respond.

Defendant further objects to Special Interrogatory No. 1 on the grounds of privacy under constitutional, statutory, or common law grounds.

California's Discovery Act permits parties to obtain "discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter is itself admissible evidence or appears reasonably calculated to lead to the discovery of admissible evidence." Cal. Code of Civ. Proc. § 2017.010. Specifically, under California's Discovery Act, Plaintiff may obtain "the identity and location of persons having knowledge of any discoverable matter." Id.

Unlike a proper privilege objection, Defendant objects to Special Interrogatory No. 1 on the grounds of privacy, which is not an absolute bar to discovery. Plaintiff is entitled to discover information in support of his anticipated Motion for Class Certification, such as the names and contact information of putative class members, each of whom is a percipient witness. The request does not seek any personal, financial, proprietary, medical, or privileged information.

The identification of potential witnesses is "[c]entral to the discovery process" and a necessary "starting point for further discovery." Puerto v. Superior Court (Wild Oats Markets) (2008) 158 Cal. App. 4th 1242, 1248. "One key legislative purpose of the discovery statutes is 'to educate the parties concerning their claims and defenses so as to encourage settlements and to expedite and facilitate trial.'" Puerto, supra, at 1248, citing Emerson Elec. Co. v. Superior Court (Grayson) (1997) 16 Cal. 4th 1101, 1107.

Although Defendant has agreed to provide the full names and employee identification numbers of putative class members, similarly in Puerto, where the court directed defendant to disclose the contact information of witnesses with percipient knowledge, Plaintiff is also entitled to putative class members' contact information as a "fundamentally routine" part of discovery. Puerto, supra, at 1248.

In Belaire-West Landscape, Inc. v. Superior Court (Rodriguez) (2007) 149 Cal. App. 4th 554, 562, the court addressed the privacy concerns raised by the disclosure of putative class members' phone numbers and addresses to plaintiff's counsel in a wage and hour matter. The court relied upon the privacy analysis set forth in the California Supreme Court case, Pioneer Electronics (USA), Inc. vs. Superior Court (Olmstead) (2007) 40 Cal. 4th 360. According to Pioneer, a court must examine (1) whether the claimant of the privacy right possesses a legally protected privacy interest, (2) whether the claimant has a reasonable expectation of privacy, and (3) whether the invasion of privacy is serious in nature, scope, and actual or potential impact. If a claimant meets all of these criteria, the court must then balance the privacy interest against other competing or countervailing interests. See Belaire-West, supra, at 558-559.

Like Pioneer (where the putative class members consisted of individuals who had complained to Pioneer that its DVD players were defective), the court in Belaire-West found that although the current and former employees possessed a legally protected interest, the employees did not have a reasonable expectation of privacy, given that current and former employees could be reasonably expected to want their information disclosed to a class action plaintiff who might ultimately recover for them unpaid wages they were owed. Similarly, the court found no serious invasion of privacy resulting from disclosure of the contact information with an opt-out notice. Id. at 561-562. The court reasoned that, just as in Pioneer, "...the information, while personal, was not particularly sensitive, as it was contact information, not medical or financial details." Id. at 562.

The Belaire-West court, after engaging in a balancing analysis, found that the balance of interests supported disclosure of the contact information. Id. In reaching that conclusion, the court reasoned that the current and former employees were potential percipient witnesses to the employer's employment and wage practices, and as such their identities and locations were properly discoverable. Id. In addition, the court found that the balancing of opposing interests tilted even more in favor of disclosure because the case involved the fundamental public policy of ensuring the prompt payment of wages due to employees. Id.

As in Belaire-West, Plaintiff is merely requesting the names and contact information of percipient witnesses to Defendant's wage and hour policies and practices. Furthermore, like Belaire-West, current and former employees of Defendant could reasonably be expected to want their information disclosed to a class action plaintiff who might ultimately recover their unpaid wages. Finally, like Belaire-West, Plaintiff has requested only the names and contact information of percipient witnesses—not medical or financial details. Accordingly, no serious invasion of privacy would result from disclosure of the contact information. Even so, under Belaire-West, the balance of interests in this case supports disclosure because current and former employees of Defendants are percipient witnesses to Defendant's wage

and hour practices and because this case concerns the fundamental public policy of ensuring the prompt payment of wages due to employees.

Defendant's objection on the grounds of privacy is, therefore, without merit.

E. Defendant's "Premature" Objection Is Specious.

Defendant objects to Special Interrogatory No. 1 on the grounds that it is premature; however, Defendant provides no support as to why it believes the interrogatory to be premature.

A plaintiff has an absolute right to conduct discovery on class certification issues. Carabini v. Superior Court (1994) 26 Cal. App. 4th 239. If the purported class representative is not permitted to conduct certification-related discovery before the motion for certification, such would be contrary to public policy in defeating class action procedures. Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal. 4th 319, 340. Given that Plaintiff is preparing for class certification and must establish numerosity, commonality, typicality, and adequate representation, the type of discovery sought here is authorized and permitted pre-certification. See Hill v. Eddie Bauer (C.D. Cal. 2007) 242 F.R.D. 556, 562.

By requesting the names and contact information of putative class members and percipient witnesses from Defendant, Plaintiff has requested information directly relevant to establishing the requirements for class certification. Defendant has not provided any support as to why pre-certification discovery is premature or objectionable.

Defendant's objection that the interrogatory is premature is without merit.

F. Defendant's Purported "Merits Determination" Objection Is Misplaced.

Defendant states in response to Plaintiff's Special Interrogatory No. 1 that Plaintiff is purportedly not representative of the entire class of employees he seeks to represent; however, no such court adjudication has been made. Defendant cannot respond to discovery requests with its own purported legal determination on Plaintiff's anticipated motion for class certification. It is within the Court's powers to determine whether Plaintiff is a proper class representative based on facts and evidence presented by the parties. As such, Plaintiff seeks to gather facts and evidence to establish class certification prerequisites from this very interrogatory.

Defendant's response that Plaintiff is not representative of the class he seeks to represent is premature and without merit.

II. CONCLUSION

Plaintiff has already agreed to enter into a Joint Stipulation and Protective Order to protect any privacy interests that may be involved in obtaining the identities and contact information of putative class members. Defendant's agreement to provide only the full names and

employee identification numbers is an incomplete response to Special Interrogatory No. 1 and obstructs Plaintiff's right to conduct discovery.

For the foregoing reasons, Plaintiff requests that Defendant provide a supplemental response to Special Interrogatory No. 1 by April 9, 2008. Otherwise, we will have no choice but to seek court intervention. If you would like to discuss any of the above issues, please do not hesitate to contact me.

Sincerely,



Linh Hua

04/02/2008 WED 10:15

FA 0.861 9051

Initiati Legal Group

001

*** FAX TX REPORT ***

TRANSMISSION OK

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PSWD/SUBADDRESS	
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ST. TIME	04/02 10:13
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PGS.	7
RESULT	OK

Via Facsimile

To: Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

From: Karen Acio
Legal Assistant to
Monica Balderrama, Esq.
Rebecca Labat, Esq.
Linh Hua, Esq.
310.556.5637 main
310.861.9051 facsimile

Date: April 2, 2008

Subject: Acheson v. G.A.L.A. et al. (Case No. 107 CV 099461)

Total Pages: 7 (including cover)



INITIATIVE LEGAL GROUP LLP

Via Facsimile

To: Joanna L. Brooks
Timothy C. Travelstead
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San Francisco, CA 94105
415.394.9401 facsimile

From: Karen Acio
Legal Assistant to
Monica Balderrama, Esq.
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Date: April 2, 2008

Subject: Acheson v. G.A.L.A. et al. (Case No. 107 CV 099461)

Total Pages: 7 (including cover)

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EXHIBIT E



Attorneys at Law

Representing Management Exclusively in Workplace Law and Related Litigation

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	HARTFORD, CT	PITTSBURGH, PA	WHITE PLAINS, NY
	HOUSTON, TX	PORTLAND, OR	

April 17, 2008

VIA FACSIMILE & U.S. MAIL

Linh Hua, Esq.
Initiative Legal Group, LLP
1800 Century Park East, 2nd Floor
Los Angeles, California 90067

Re: Acheson v. G.A.L.A., Inc. et al.

Dear Ms. Hua:

We are in receipt of your correspondence dated April 2, 2008 concerning Presidio's International, Inc.'s ("Presidio") response to Special Interrogatory No. 1 as set forth in Plaintiff's Special Interrogatories, Set One. Following is Presidio's response to that correspondence.

Special Interrogatory No. 1 requests "the full name, last known address, and telephone numbers of each and every COVERED EMPLOYEE who was employed by PRESIDIO INTERNATIONAL, INC., during the RELEVANT TIME PERIOD. For purposes of this interrogatory, the term "COVERED EMPLOYEE" means and refers to all non-exempt or hourly persons employed by PRESIDIO INTERNATIONAL, INC., in the State of California at any time during the period commencing four (4) years prior to the filing of the COMPLAINT to present; the term "PRESIDIO INTERNATIONAL, INC." means and refers to defendant PRESIDIO INTERNATIONAL, INC. and any of its parent, subsidiaries, successors and predecessors, directors, officers, agents, investigators, personnel and employees; the term "COMPLAINT" means and refers to Plaintiff's Complaint filed in this action on November 11, 2007; the term "RELEVANT TIME PERIOD" means and refers to the period of time commencing four (4) years prior to the filing of the COMPLAINT to the present."

Presidio objected to this request as overly broad, unduly burdensome, compound, seeking confidential information and seeking information protected by the an individual's right to privacy. Each of these objections are addressed below.



Linh Hua, Esq.
Initiative Legal Group, LLP
April 17, 2008
Page 2

Special Interrogatory No. 1 Seeks Disclosure of Information Protected by the Right to Privacy and is Premature

Special Interrogatory No. 1 violates the privacy rights of the "COVERED EMPLOYEES." The request seeks private and confidential information about "COVERED EMPLOYEES" without any protections for their privacy rights.

That putative class members in employment litigation have a privacy interest in their contact information is clear. In *Pioneer Electronics, Inc. v. Superior Court* (2007) 40 Cal.4th 360, the California Supreme Court held that persons who had voluntarily disclosed their contact information during the purchase of a DVD player nonetheless still had sufficient privacy interest in their contact information such that they must be given the opportunity to object before their contact information is disclosed to a plaintiff's counsel in a class action.

In *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554, the Court of Appeals applied this ruling to the employment context and ruled that "the privacy concerns here are more significant than those in *Pioneer*" because the employees did not voluntarily disclose their contact information as part of a commercial transaction; rather they had to disclose their contact information as a condition of employment. (*Id.* at 561.) Therefore, the *Belaire* court ruled, putative class members' privacy interests must be protected in such litigation by giving them the opportunity to block any disclosure of their contact information to plaintiff's counsel.

In both the *Pioneer* and *Belaire* cases cited above, the issue was not whether the putative class members should be given an opportunity to object to the disclosure of such information. Rather, the court focused on the appropriate manner by which the putative class member should be given such an opportunity. In this case, it is undisputed that the putative class members have not been given any opportunity to object or assent to the disclosure of their contact information. Thus, Plaintiff's request for the contact information is premature and violates putative class members' right to privacy.

Special Interrogatory No. 1 is Compound

Code of Civil Procedure section 2030.060(f) states "[n]o specially prepared interrogatory shall contain subparts, or a compound, conjunctive, or disjunctive question." Special Interrogatory No. 1 is compound and violates Code of Civil section 2030.060(f). It seeks three different categories of information. Specifically, Plaintiff is seeking the names of class members, their addresses and their telephone numbers.

Responding to Special Interrogatory No. 1 Would be Unduly Burdensome as the Interrogatory is Overbroad

The class in this case has not yet been defined. In fact, the general nature of the allegations at issue in this case are still somewhat amorphous as Plaintiff contemplates filing an amended complaint to add claims. Plaintiff seeks information concerning all potential class members. Since the universe of claims in this case has not yet been defined and the class has not yet been ascertained it is unduly



Linh Hua, Esq.

Initiative Legal Group, LLP

April 17, 2008

Page 3

burdensome to request Presidio to obtain the names and contact information for individuals who may not have any pertinent information concerning this case.

Special Interrogatory No. 1 Seeks Information which is Confidential and Proprietary

Section 3426 et seq. of the Civil Code protects information which derives independent economic value from not being generally known and is subject to reasonable efforts to maintain its secrecy from disclosure. Civ. Code §§3426.1(d), 3426.2. In this case, Presidio has undertaken efforts not to disclose information regarding its current and former employees. That information obviously has economic value which is why Plaintiff seeks such information.

Special Interrogatory No. 1 seeks confidential information protected by the right to privacy. Additionally, the request is premature and unduly burdensome particularly given the procedural posture of this case. Consequently, for the reasons set forth in its response to the interrogatory and this correspondence, Presidio is unable to provide a further response to the interrogatory.

Very truly yours,

JACKSON LEWIS LLP

A handwritten signature in black ink, appearing to read "Punam Sarad".

Punam Sarad

PS/bv

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7 Attorneys for Plaintiff ROBERT ACHESON
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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
behalf of other members of the general public
13 similarly situated,

14 Plaintiff,

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**PLAINTIFF'S SEPARATE STATEMENT
IN SUPPORT OF MOTION TO COMPEL
DEFENDANT PRESIDIO
INTERNATIONAL, INC.'S FURTHER
RESPONSES TO SPECIAL
INTERROGATORIES, SET ONE**

Date: May 30, 2008

Time: 10:00 a.m.

Dept.: 7

1 Pursuant to Rule 3.1020 of the California Rules of Court, Plaintiff Robert Acheson
2 ("Plaintiff") respectfully submits this Separate Statement in support of his Motion to Compel the
3 further responses of Defendant Presidio International, Inc. ("Defendant") to Plaintiff's Special
4 Interrogatories, Set One, No. 1, propounded on or about January 28, 2008.

5 **SPECIAL INTERROGATORY NO. 1:**

6 Provide the full name, last known address, and telephone numbers of each and every
7 COVERED EMPLOYEE who was employed by PRESIDIO INTERNATIONAL, INC. during the
8 RELEVANT TIME PERIOD. For purposes of this interrogatory, the term "COVERED
9 EMPLOYEE" means and refers to all non-exempt or hourly persons employed by PRESIDIO
10 INTERNATIONAL, INC. in the State of California at any time during the period commencing
11 four (4) years prior to the filing of the COMPLAINT to present; the term "PRESIDIO
12 INTERNATIONAL, INC." means and refers to defendant PRESIDIO INTERNATIONAL, INC.
13 and any of its parents, subsidiaries, successors and predecessors, directors, officers, agents,
14 investigators, personnel and employees; the term "COMPLAINT" means and refers to Plaintiff's
15 Complaint filed in this action on November 11, 2007; the term "RELEVANT TIME PERIOD"
16 means and refers to the period of time commencing four (4) years prior to the filing of the
17 COMPLAINT to the present.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

19 DEFENDANT objects to this request on the grounds that it is overly broad, unduly
20 burdensome and oppressive to the extent Plaintiff seeks information regarding individuals who
21 have yet to be recognized by this Court as putative class members. DEFENDANT further objects
22 to this request on the grounds that it is compound. DEFENDANT further objects to this request to
23 the extent it call for the disclosure of confidential or competitively sensitive proprietary
24 information that is privileged and protected from discovery or information protected from
25 disclosure by California Civil Code Section 3426 et seq. DEFENDANT further objects to this
26 Request to the extent it seeks information the release of which would be a violation of any
27 individual's right of privacy under Article I, Section 1 of the California Constitution, or Section
28 1799.1 of the California Civil Code, or any other constitutional, statutory or common law right of

1 privacy of any person. DEFENDANT further objects to this request on the grounds it is
 2 premature. Plaintiff is not entitled to a class list consisting of all non-exempt or hourly persons
 3 employed by PRESIDIO INTERNATIONAL, INC., in the State of California at any time during
 4 the period commencing four (4) years prior to the filing of the COMPLAINT to present. Plaintiff
 5 is not representative of the entire class of employees he seeks to represent.

6 **REASONS TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORY**

7 **NO. 1**

8 **A. California's Civil Discovery Act Permits A Wide Scope Of Discovery.**

9 The California Civil Discovery Act makes abundantly clear the wide scope of permissible
 10 discovery:

11 Unless otherwise limited by order of the court in accordance with
 12 this title, *any party may obtain discovery regarding any matter,*
 13 *not privileged, that is relevant to the subject matter involved in*
 14 *the pending action or to the determination of any motion made in*
 15 *that action, if the matter either is itself admissible in evidence or*
 16 *appears reasonably calculated to lead to the discovery of*
 17 *admissible evidence.*

18 Cal. Civ. Proc. Code § 2017.010 (emphasis added).

19 California's legislature deliberately drafted statutes allowing an "expansive scope of
 20 discovery" with the intent "to educate the parties concerning their claims and defenses so as to
 21 encourage settlements and to expedite and facilitate trial." Puerto v. Superior Court (2008) 158
 22 Cal. App. 4th 1242, 1249, citing Emerson Electric Co. v. Superior Court (1997) 16 Cal. 4th 1101,
 23 1107-8. The discovery procedures are also "designed to minimize the opportunities for fabrication
 24 and forgetfulness." Puerto, supra, at 1249, citing Glenfed Development Corp. v. Superior Court
 25 (1997) 53 Cal. App. 4th 1113, 1119.

26 Plaintiff's Special Interrogatory No. 1 requests the full name, last known address, and
 27 telephone number of each putative class member, and it is well within the scope of permissible
 28 discovery under California's Civil Discovery Act. The information sought is highly relevant to
 each of the claims alleged in Plaintiff's Class Action Complaint and his anticipated class

1 certification motion as it would allow Plaintiff to gather information from putative class members
2 in evaluating the widespread impact of Defendant's wage and hour violations.

3 The names and contact information of potential percipient witnesses who shared factually
4 similar circumstances with Plaintiff in their employment with Defendant is a crucial element in
5 pre-certification discovery. It allows both of the parties equal access to additional facts underlying
6 Plaintiff's class allegations and allows putative class members to provide facts that were not
7 necessarily documented or maintained by Defendant.

8 **1. California's Civil Discovery Act Specifically Permits**
9 **Plaintiff To Obtain The Requested Names And Contact Information.**

10 California's Civil Discovery Act specifically deems Plaintiff's requested information
11 discoverable:

12 Discovery may relate to the claim or defense of the party seeking
13 discovery or of any other party to the action. *Discovery may be*
14 *obtained of the identity and location of persons having*
15 *knowledge of any discoverable matter*, as well as of the existence,
description, nature, custody, condition, and location of any
document, tangible thing, or land or other property.

16 Cal. Civ. Proc. Code § 2017.010 (emphasis added).

17 Our discovery system is "founded on the understanding that parties use discovery to obtain
18 names and contact information," and "[c]entral to the discovery process is the identification of
19 potential witnesses" for the purpose of further investigations. Puerto, supra, at 1249-50. The
20 "disclosure of the names and addresses of potential witnesses is a routine and essential part of
21 pretrial discovery." Puerto, supra, at 1249-50, citing People v. Dixon (2007) 148 Cal. App. 4th
22 414, 443.

23 Certainly in drafting and approving California's Civil Discovery Act, the legislature knew
24 that witnesses would have knowledge of discoverable facts necessary in the litigation of lawsuits,
25 particularly in putative class action lawsuits where such witnesses could be class members.
26 Therefore, contrary to Defendant's objections, Plaintiff's Special Interrogatory No. 1 does not
27 exceed his right to the discovery of putative class members' names and contact information.
28 Plaintiff's request is not only relevant to the alleged claims, it is specifically permitted by statute.

1 It would be unjust to allow only Defendant the right to utilize and monopolize this
 2 essential mass of information which both of the parties require in the further investigation of class
 3 allegations. Defendant's refusal to provide the requested information is in blatant disregard of our
 4 discovery system and serves to deliberately hinder use of the class action device.

5 **B. Defendant's Boilerplate Objections Are Unsupported And Without Merit.**

6 Despite Plaintiff's agreement to enter into a protective order and Plaintiff's continual
 7 efforts to informally resolve this issue, Defendant has failed to provide any responsive information
 8 to Plaintiff's Special Interrogatory No. 1. Defendant's improper objections are discussed *infra*.

9 **1. Disclosure Of Putative Class Members' Contact Information**
 10 **Does Not Violate Privacy Rights.**

11 Defendant objects to providing the names and contact information of the putative class
 12 members on the ground that it is protected by the right of privacy. Despite the Protective Order
 13 into which the parties entered, Defendant continues to refuse to provide the requested information
 14 on grounds of privacy.

15 Defendant also specifically objects to Plaintiff's Special Interrogatory No. 1 under
 16 California Civil Code section 1799.1. Under California Civil Code section 1799.1, Defendant, as a
 17 business entity, shall not disclose any contents of its business records, unless the disclosure is
 18 discoverable. Cal. Civ. Code § 1799.1(b)(2). Under California Code of Civil Procedure section
 19 2017.010, "discovery may be obtained of the identity and location of persons having knowledge of
 20 any discoverable matter." Cal. Civ. Proc. Code § 2017.010. In that putative class members act as
 21 percipient witnesses and can provide relevant facts to the class allegations, Plaintiff's request for
 22 the names and contact information of putative class members is not restricted under California
 23 Civil Code section 1799.1.

24 Defendant has ignored the fact that the right of privacy is not an absolute bar to discovery.
 25 Rather, courts balance the need for the information against the claimed privacy right. Ragge v.
 26 MCA/Universal Studios (C.D. Cal. 1995) 165 F.R.D. 601, 604. Here, Plaintiff is entitled to
 27 discover information in support of his anticipated motion for class certification, such as the names
 28

1 and contact information of putative class members, each of whom is a percipient witness. This
2 interrogatory does not seek any personal, financial, proprietary, medical or privileged information.

3 In Belaire-West Landscape, Inc. v. Superior Court (Rodriguez) (2007) 149 Cal. App. 4th
4 554, 562, the court addressed the privacy concerns implicated by the disclosure of putative class
5 members' phone numbers and addresses to plaintiff's counsel in a wage and hour class action.
6 The court relied upon the privacy analysis set forth in the California Supreme Court case, Pioneer
7 Electronics (USA), Inc. vs. Superior Court (Olmstead) (2007) 40 Cal. 4th 360. According to
8 Pioneer, a court must examine (1) whether the claimant of the privacy right possesses a legally
9 protected privacy interest, (2) whether the claimant has a reasonable expectation of privacy, and
10 (3) whether the invasion of privacy is serious in nature, scope, and actual or potential impact. If a
11 claimant meets all of these criteria, the court must then balance the privacy interest against other
12 competing or countervailing interests. Belaire-West, supra, at 558-559.

13 Similar to Pioneer (where the putative class members consisted of individuals who had
14 complained to Pioneer that its DVD players were defective), the court in Belaire-West found that
15 although the current and former employees possessed a legally protected interest, the employees
16 did not have a reasonable expectation of privacy, given that current and former employees could
17 be reasonably expected to want their information disclosed to a class action plaintiff who might
18 ultimately recover for them unpaid wages which they were owed. The court reasoned that, just as
19 in Pioneer, "the information, while personal, was not particularly sensitive, as it was contact
20 information, not medical or financial details." Belaire-West, supra, at 562.

21 Because there was no serious invasion of privacy, the Belaire-West court found that the
22 need to engage in a balancing of interests was obviated. Id. After engaging in a balancing
23 analysis, the court found that the balance of interests supported disclosure of the contact
24 information. Id. In reaching that conclusion, the court reasoned that the current and former
25 employees were potential percipient witnesses to the employer's employment and wage practices,
26 and as such their identities and locations were properly discoverable. Id. In addition, the court
27 found that the balancing of opposing interests tilted even more in favor of disclosure because the
28

1 case involved the fundamental public policy of ensuring the prompt payment of wages due to
2 employees. Id.

3 As in Belaire-West, Plaintiff here is merely requesting the names and contact information
4 of percipient witnesses to Defendant's wage and hour policies and practices. Also, similar to
5 Belaire-West, current and former employees can reasonably be expected to want their information
6 disclosed to a class action plaintiff who might ultimately recover for them unpaid wages which are
7 owed to them. Finally, like Belaire-West, Plaintiff here has requested only the names and contact
8 information of percipient witnesses, not medical or financial details. No serious invasion of
9 privacy would result from disclosure of the contact information for the purpose of litigating a
10 wage and hour putative class action. The need to engage in a balancing test is unnecessary.

11 Further supporting the production of names and contact information of putative class
12 members, the Court of Appeal for the Second Appellate District in Puerto, supra, stated, "the trial
13 court articulated no justification for placing in the hands of witnesses absolute and unreviewable
14 veto power over petitioner's access to contact information to permit them to pursue legitimate
15 discovery into their civil claims, and upon performing the appropriate privacy analysis we
16 perceive no basis for affording these witnesses' addresses and telephone numbers protections in
17 excess of those afforded to vastly more private consumer and employment records." Puerto,
18 supra, at 1259. The Court of Appeal overruled the trial court's decision and ordered the defendant
19 in that case to disclose the contact information of putative class members. Similarly, this Court
20 should order Defendant to provide substantive responses to Plaintiff's Special Interrogatory No. 1
21 and disclose the names and contact information of putative class members.

22 **2. The Uniform Trade Secrets Act Is Inapplicable To**
23 **Plaintiff's Special Interrogatory No. 1.**

24 Defendant objects to Special Interrogatory No. 1 on the ground that it allegedly requests
25 disclosure of confidential or competitively sensitive proprietary information that is privileged and
26 protected from discovery by California Civil Code sections 3426, et seq. (Uniform Trade Secrets
27 Act). Defendant does not provide authority for its objection that putative class members' names
28 and contact information are properly defined under the Uniform Trade Secrets Act as either a

1 "formula, pattern, compilation, program, device, method, technique, or process" in which it is
2 "reasonable under the circumstances to maintain its secrecy." Cal. Civ. Code § 3246.1(d)(1)-(2).

3 Defendant's conclusory statement that the requested information derives independent
4 economic value could easily apply to every piece of information exchanged through formal
5 discovery in that such information could support Plaintiff's claims and anticipated motions.
6 Defendant's argument would improperly classify all information in the process of formal
7 discovery as a "trade secret" under Uniform Trade Secrets Act. This argument both misinterprets
8 the protections under the Uniform Trade Secrets Act and contravenes the legislative purpose of the
9 Civil Discovery Act.

10 Plaintiff's claims are brought in the context of a putative class action based on Defendant's
11 violation of California's wage and hour laws and Unfair Competition laws. Plaintiff's putative
12 class action does not allege claims related to Defendant's trade secrets, and this interrogatory does
13 not seek information protected under the Uniform Trade Secrets Act. Rather, Plaintiff seeks to
14 obtain properly discoverable information related to his wage and hour claims by requesting that
15 Defendant provide the names and contact information of percipient witnesses and putative class
16 members who serve as a necessary gateway to further investigation of the class allegations.

17 The information requested in Plaintiff's Special Interrogatory No. 1 is not protected under
18 California's Uniform Trade Secrets Act, and Defendant's objection is without merit.

19 **3. A Request For The Names And Contact Information Of Putative Class**
20 **Members Is Not Overly Broad, Unduly Burdensome, Nor Oppressive.**

21 Defendant further objects on the grounds that Plaintiff's Special Interrogatory No. 1 is
22 overly broad, unduly burdensome and oppressive. Defendant's objections do not provide a basis
23 to withhold the requested information.

24 In West Pico Furniture Co. of Los Angeles v. Superior Court (1961) 56 Cal. 2d 407, the
25 plaintiff requested the names, addresses, duties, and dates pertaining to all employees who
26 participated in various transactions between the parties. At issuance of a peremptory writ of
27 mandate, the respondent court was required to vacate its order sustaining defendant's objections to
28 specified interrogatories.

1 The California Supreme Court stated:

2 Oppression must not be equated with burden. The objection based
3 upon *burden must be sustained by evidence showing the quantum*
4 *of work required*, while to support an objection of *oppression*
5 there *must be some showing either of an intent to create an*
6 *unreasonable burden* or that the ultimate effect of the *burden is*
7 *incommensurate with the result* sought...[There is] a legislative
acknowledgement that some burden is inherent in all demands for
discovery. The objection of burden is valid only when that burden
is demonstrated to result in injustice.

8 West Pico Furniture Co., supra, at 417 (emphasis added).

9 Similarly here, Defendant failed to support its objections with any evidence to show the
10 quantum of work required in providing substantive responses to Plaintiff's Special Interrogatory
11 No. 1. Defendant also failed to support its objections with evidence that the interrogatory was
12 allegedly oppressive. In fact, Defendant's response to Plaintiff's Special Interrogatory No. 1 was
13 devoid of any supplemental documents pertaining to or providing grounds for its boilerplate
14 objections. There is no indication of the alleged time or expense required of Defendant in
15 providing the information requested in Plaintiff's Special Interrogatory No. 1. Indeed, contrary to
16 Defendant's position, the requested information is readily ascertainable through Defendant's
17 employment records.

18 Additionally, Defendant's conclusory statement that the interrogatory is overly broad
19 ignores Plaintiff's efforts to narrowly tailor Special Interrogatory No. 1. With regard to time, it is
20 limited to four years prior to the filing of the Complaint through the present. With regard to
21 geography, it is limited to the individuals employed by Defendant within the State of California.
22 With regard to classification, it is limited to employees who are or were classified as non-exempt
23 or hourly employees.

24 Defendant further objects that the request is overly broad because a contemplated
25 amendment to Plaintiff's Complaint to add claims would negate the need to exchange discovery to
26 support claims that have already been alleged. Despite Plaintiff's contemplated filing of an
27 amended complaint, the claims alleged in Plaintiff's current, operative Complaint are properly
28 pleaded and require additional facts from percipient witnesses and putative class members for

1 further investigation. In particular, where Defendant may fail to maintain records of rest breaks,
2 the violation of which is a claim properly alleged in the operative Complaint, the litigation of this
3 matter would benefit from the exchange of information retained by putative class members
4 regarding their work experience with Defendant. The potential amendment of the Complaint does
5 not permit Defendant to refuse compliance with California's Civil Discovery Act.

6 Defendant's boilerplate objections that Special Interrogatory No. 1 is overly broad, unduly
7 burdensome and oppressive are without merit.

8 **4. Plaintiff's Discovery Goes To Class Certification**
9 **And Is Not Premature.**

10 Defendant objects on the ground that Plaintiff's Special Interrogatory No. 1 is allegedly
11 premature. Ironically, Defendant prematurely "determined" that Plaintiff is not representative of
12 the entire class of employees he seeks to represent and is not entitled to a class list of those
13 employees. Additionally, Defendant fails to provide any support or authority with its objection
14 that the Court must first make a legal determination regarding the status of individuals as *putative*
15 class members prior to Plaintiff's request for the names and contact information for those
16 individuals.

17 This case has been fashioned as a class action, and Plaintiff must satisfy the requirements
18 of California Code of Civil Procedure section 382, including "numerosity," "typicality,"
19 "commonality," and "adequacy" in order for the court to grant class certification. If a purported
20 class representative is not permitted to conduct certification-related discovery before the motion
21 for certification, the class action device would cease to exist, which is a result contrary to public
22 policy. See, e.g., Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal. 4th 319, 340
23 (California has a "clear public policy . . . that is specifically directed at the enforcement of
24 California's minimum wage and overtime laws for the benefit of workers" and "a public policy
25 which encourages the use of the class action device.").

26 A plaintiff has an absolute right to conduct discovery on class certification issues. See
27 Carabini v. Superior Court (1994) 26 Cal. App. 4th 239. Defendant's objection to the adequacy of
28 Plaintiff's representation is an issue that is properly dealt with during a certification motion, not

1 stated as an objection to Plaintiff's Special Interrogatory No. 1. See Carabini, supra, at 244
2 ("[E]ach party should have an opportunity to conduct discovery on class action issues before its
3 documents in support of or in opposition to the motion must be filed."). Given that Plaintiff is
4 preparing for class certification and must establish numerosity, commonality, typicality, and
5 adequate representation, the type of discovery sought here is authorized and permitted pre-
6 certification discovery. See Hill v. Eddie Bauer (C.D. Cal. 2007) 242 F.R.D. 556, 562.

7 As a matter of law, Plaintiff is entitled to class certification discovery and the identities of
8 class members prior to class certification. Pioneer, supra, 40 Cal. 4th at 373 ("contact information
9 regarding the identity of potential class members is generally discoverable, so that the lead
10 plaintiff may learn the names of other persons who might assist in prosecuting the case."); Belaire-
11 West, supra, 149 Cal. App. 4th at 561 ("[C]urrent and former [] employees [can] reasonably be
12 expected to want their information disclosed to a class action plaintiff who may ultimately recover
13 for them unpaid wages that they are owed."). The information specifically sought here will
14 establish whether there are common questions of law and fact that predominate the class claims.

15 Plaintiff's Special Interrogatory No. 1 seeks the names and contact information of putative
16 class members for the purpose of pursuing further investigation of the class allegations. Plaintiff's
17 request is properly brought as part of pre-certification discovery, and it directly impacts Plaintiff's
18 ability to establish typicality and commonality for class certification. Defendant's objections act
19 to unilaterally prohibit Plaintiff's ability to pursue a class action, despite statutory and common
20 law provisions, leaving only the option for each putative class member to separately pursue his or
21 her own claims with individualized discovery requests.

22 Therefore, Defendant's objections are improper and further responses should be ordered.

23 **5. Special Interrogatory No. 1 Is Not Compound, And Defendant Must**
24 **Still Respond To The Extent Possible.**

25 Defendant objects to Special Interrogatory No. 1 on the ground that it is compound;
26 however, Plaintiff's interrogatory does not present a compound question by specifically indicating
27 the type of information sought in Special Interrogatory No. 1, namely, putative class members'
28 full names, last known addresses, and telephone numbers. By specifying the exact identifying

1 information that Plaintiff seeks, Plaintiff has properly narrowed the scope of the interrogatory, and
2 a complete response by Defendant would not result in inconsistent information. Notwithstanding
3 its objection, the request is intelligible, and Defendant is still obligated to answer the interrogatory
4 "to the extent possible." Cal. Civ. Proc Code § 2030.220(b).

5 Defendant's objection on the ground that Special Interrogatory No. 1 is compound is,
6 therefore, without merit.

7
8 Dated: April 22, 2008

Respectfully submitted,

INITIATIVE LEGAL GROUP, LLP

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10
11 By: 

Marc Primo

Mónica Balderrama

Rebecca Labat

Linh Hua

Attorneys for Plaintiff Robert Acheson

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7 Attorneys for Plaintiff ROBERT ACHESON
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
behalf of other members of the general public
13 similarly situated,

14 **Plaintiff,**

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
19 inclusive,

20 **Defendants.**
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Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO COMPEL
DEFENDANT PRESIDIO
INTERNATIONAL, INC.'S FURTHER
RESPONSES TO SPECIAL
INTERROGATORIES, SET ONE**

Date: May 30, 2008

Time: 10:00 a.m.

Dept.: 7

1 The Court, having heard and considered Plaintiff's Motion to Compel Further Responses,
2 Defendants' Opposition, and all related papers on May 30, 2008, and

3 GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED that Plaintiff's
4 Motion to Compel the Further Responses of Defendant Presidio International, Inc. to Plaintiff's
5 Special Interrogatories, Set One, No. 1 is GRANTED.

6 FURTHER GOOD CAUSE HAVING BEEN SHOWN, IT IS ORDERED that Plaintiff's
7 Request for Sanctions in the amount of \$4,119.50 for the bringing of said motion is GRANTED.

8
9 IT IS SO ORDERED.

10
11 Dated: _____

12 Hon. Socrates Manoukian
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6 Initiative Legal Group LLP
7 1800 Century Park East, 2nd Floor
8 Los Angeles, California 90067
9 Telephone: (310) 556-5637
10 Facsimile: (310) 861-9051

11 Attorneys for Plaintiff ROBERT ACHESON

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SANTA CLARA**

14 ROBERT ACHESON, individually, and on
15 behalf of other members of the general public
16 similarly situated,

17 Plaintiff,

18 vs.

19 G.A.L.A., INC., a Delaware corporation;
20 GIORGIO ARMANI CORPORATION, a
21 New York corporation; PRESIDIO
22 INTERNATIONAL, INC., a Delaware
23 Corporation; and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

PROOF OF SERVICE

Date: May 30, 2008

Time: 10:00 a.m.

Dept.: 7

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On April 22, 2008, I served the within document(s) described below as:

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANT PRESIDIO INTERNATIONAL, INC.'S FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DEFENDANT PRESIDIO INTERNATIONAL, INC.'S FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

PLAINTIFF'S SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL DEFENDANT PRESIDIO INTERNATIONAL, INC.'S FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

DECLARATION OF LINH HUA IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DEFENDANT PRESIDIO INTERNATIONAL, INC.'S FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

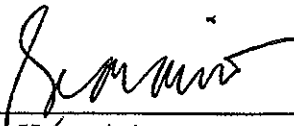
[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DEFENDANT PRESIDIO INTERNATIONAL, INC.'S FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes address as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () **PERSONAL:** I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on April 22, 2008, at Los Angeles, California.



Karen Acio

1 Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
3 Mónica Balderrama (SBN 196424)
4 Rebecca Labat (SBN 221241)
5 Linh Hua (SBN 247419)
6 Initiative Legal Group LLP
7 1800 Century Park East, 2nd Floor
8 Los Angeles, California 90067
9 Telephone: (310) 556-5637
10 Fax: (310) 861-9051

11 Attorneys for Plaintiff Robert Acheson

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SANTA CLARA**

14 ROBERT ACHESON, individually, and on
15 behalf of other members of the general public
16 similarly situated,

17 Plaintiff,

18 vs.

19 G.A.L.A., INC., a Delaware corporation;
20 GIORGIO ARMANI CORPORATION, a New
21 York corporation; PRESIDIO
22 INTERNATIONAL, INC., a Delaware
23 Corporation; and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case No. 107 cv 099461

CLASS ACTION

**PLAINTIFF ROBERT ACHESON'S
STATEMENT OF DAMAGES**

Complaint Filed: November 21, 2007

1 Plaintiff Robert Acheson ("Plaintiff") responds and objects to Defendant Presidio
2 International, Inc.'s ("Defendant") Request for Statement of Damages as follows:

3 Plaintiff objects to Defendant Presidio International, Inc.'s Request for Statement of Damages
4 on the grounds it is irrelevant, vague and ambiguous, and wholly inapplicable to this putative class
5 action. California Code of Civil Procedure section 425.11 permits a defendant to request a statement
6 of damages when a complaint is filed "in an action to recover damages for *personal injury or*
7 *wrongful death.*" Cal. Civ. Proc. Code § 425.11(b) (emphasis added).

8 Plaintiff's Class Action Complaint, filed on November 21, 2007, alleges California wage and
9 hour violations, including: (1) Violation of California Labor Code sections 510 and 1198 (Unpaid
10 Overtime); (2) Violation of California Labor Code sections 201 and 202 (Wages Not Paid Upon
11 Termination); (3) Violation of California Labor Code section 204 (Failure to Pay Wages); (4)
12 Violation of California Labor Code section 226.7(a) (Denial of Rest Periods); (5) Violation of
13 California Labor Code section 226(a) (Improper Wage Statements); and (6) Violation of California
14 Business & Professions Code sections 17200, et seq. Plaintiff does *not* seek recovery of damages for
15 personal injury or wrongful death.

16 Defendant does not provide applicable statutory grounds for which to request a Statement of
17 Damages. California Code of Civil Procedure section 425.11 is both inapplicable and irrelevant to
18 this action. Notwithstanding Plaintiff's objection, Plaintiff provides as follows:

19 ///

20 ///

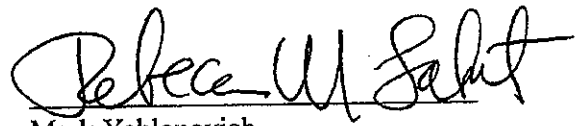
21 ///

1 Plaintiff is currently investigating and engaging in formal discovery with Defendant. At this
2 time, copious amounts of relevant and discoverable information from witnesses, documents and/or
3 other sources have not yet been produced by Defendant. Furthermore, at this stage of pre-
4 certification litigation, Plaintiff is not required to assess either the merits or the damages of this
5 putative class action.

6 Plaintiff reserves the right to further respond, if deemed necessary, to this statement of
7 damages.

8
9 DATED: May 23, 2008

INITIATIVE LEGAL GROUP, LLP

10 

11 Mark Yablonovich

12 Marc Primo

13 Mónica Balderrama

14 Rebecca Labat

15 Linh Hua

16 Attorneys for Plaintiff Robert Acheson

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On May 23, 2008, I served the within document(s) described below as:

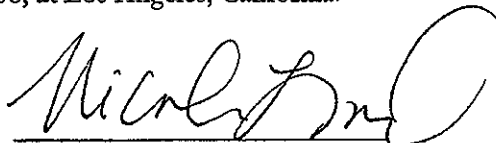
PLAINTIFF ROBERT ACHESON'S STATEMENT OF DAMAGES

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105

- (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
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- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- () **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on May 23, 2008, at Los Angeles, California.


Nicole Lord



INITIATIVE LEGAL GROUP LLP

Via Facsimile

To: Joanna L. Brooks
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

From: Karen Acio
Legal Assistant to
Monica Balderrama, Esq.
Rebecca Labat, Esq.
Linh Hua, Esq.
310.556.5637 main
310.861.9051 facsimile

Date: May 28, 2008

Subject: Acheson v. G.A.L.A. et al. (Case No. 107 CV 099461)

**PLAINTIFF ROBERT ACHESON'S NOTICE OF INTENT TO
APPEAR BY TELEPHONE FOR PLAINTIFF'S MOTION TO
COMPEL DEFENDANT PRESIDIO INTERNATIONAL, INC.'S
FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET
ONE**

Total Pages: 7 (including cover)

1 Mark Yablonovich (SBN 186670)
Marc Primo (SBN 216796)
2 Mónica Balderrama (SBN 196424)
3 Rebecca Labat (SBN 221241)
4 Linh Hua (SBN 247419)
Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051
7 Attorneys for Plaintiff Robert Acheson

8
9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
behalf of other members of the general public
13 similarly situated,

14 Plaintiff,

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
21
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Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**PLAINTIFF ROBERT ACHESON'S
NOTICE OF INTENT TO APPEAR BY
TELEPHONE FOR PLAINTIFF'S
MOTION TO COMPEL DEFENDANT
PRESIDIO INTERNATIONAL, INC.'S
FURTHER RESPONSES TO SPECIAL
INTERROGATORIES, SET ONE**

[Via CourtCall Service (888) 447-3470]

Date: May 30, 2008
Time: 10:00 a.m.
Dept.: 7 [Honorable Socrates Manoukian]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

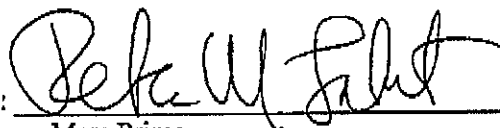
2 **PLEASE TAKE NOTICE THAT** Rebecca Labat, counsel for Plaintiff Robert Acheson
3 ("Plaintiff"), will appear by telephone on Friday, May 30, 2008, at 10:00 a.m. for the hearing on
4 Plaintiff's Motion to Compel Defendant Presidio International Inc.'s Further Responses to Special
5 Interrogatories, Set One in the above-captioned Court, located at 191 N. First Street, San Jose,
6 California 95113.

7 Attached as Exhibit A is a true and correct copy of the CourtCall Confirmation.

8
9 Dated: May 28, 2008

Respectfully submitted,

INITIATIVE LEGAL GROUP, LLP

10
11 By: 

12 Marc Primo
13 Mónica Balderrama
14 Rebecca Labat
15 Linh Hua
16 Attorneys for Plaintiff Robert Acheson
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EXHIBIT A

Attorney Appearing: Rebecca L. Labat Initiative Legal Group LLP Tel No: 310-556-5637 Fax No: 310-861-9051 Representing: Plaintiff(s), Robert Acheson <u>Effective 3/1/08 the CourtCall Appearance fee for this Court is \$60.00</u>	Calendar Status Your CourtCall Appearance has been confirmed for Judge Socrates Manoukian, Dept 7 at 10:00 AM on Friday, May 30th, 2008 At five minutes prior to the above time, dial (800) 447-3470. This call will be operator assisted.
<h2 style="margin: 0;">CONFIRMATION</h2>	
Santa Clara County Superior Court	
Case Name Robert Acheson vs. G.A.L.A., Inc., et al Case Number 107CV099481 Nature of hearing: Motion CourtCall ID# 2232631 (not access code)	Be prompt, or your case may be heard without you! If you encounter any problems or if the Court has not joined the call within 15 minutes, remain on your teleconference and have a staff member call CourtCall, LLC at (310)342-0888 or 1(888)88 COURT.

Mandatory Instructions For Making A CourtCall® Appearance

1. IT IS COUNSEL'S RESPONSIBILITY TO DIAL INTO THE CONFERENCE AT LEAST FIVE MINUTES PRIOR TO THE SCHEDULED APPEARANCE TIME. COURTCALL DOES NOT CALL COUNSEL! If you are unavoidably late and the Court is already in session, you must wait for an appropriate moment to announce yourself. Do not interrupt the Judge.

NEVER PLACE THE CONFERENCE ON HOLD. CELLULAR AND PAYPHONES ARE STRICTLY PROHIBITED.

2. When speaking with the Court, always talk directly into the handset and state your name clearly each time you speak. DO NOT USE YOUR SPEAKERPHONE as it may compromise the quality of the call for ALL participants, including the Court.

3. When you place your call, you must be in a QUIET AREA. Give the Court your absolute undivided attention. All background noise must be eliminated (i.e. cell phones, pagers, intercoms, typing, paper shuffling, dogs barking, babies crying, etc.) Your attention must be focused solely on the Court and you should refrain from making any unnecessary noise or engaging in conversations with others. Disruptions on the conference line will not be tolerated by the Court.

4. Once you have dialed into the conference you may be checked in by an operator or a clerk, alternatively, you may not be addressed until the Court calls your specific case. Listen carefully to the Court proceedings as the Court may make general observations applicable to all matters which will not be repeated.

***** The Court expects you to act professionally and failure to adhere to these instructions may result in the termination of your call or the entire conference, sanctions for a non-appearance or an order for counsel to appear in Court at the next session or such other consequences the Court deems appropriate, as well as withdrawing the privilege of appearing telephonically in the future. *****

It is counsel's responsibility to notify CourtCall of any continuance or cancellation prior to the scheduled hearing time to have your fee apply to the continued hearing or to be eligible for a refund as the Court will not notify CourtCall of any continuance or cancellation of your matter. Matters continued at the time of the hearing require a new form and a new fee for the continued date. **To continue or cancel your CourtCall Appearance: Call (888) 882-6876 prior to the scheduled appearance time.**

Stop writing checks or tracking credit card charges, open a CourtCall debit account and receive a monthly ledger identifying each CourtCall Appearance. Please call our office for details. Our address is CourtCall LLC, 6383 Arizona Circle, Los Angeles, CA 90045.

COURTCALL, LLC

6383 Arizona Circle, Los Angeles, CA 90045

(TEL) (888) 882-6878 or (310) 342-0888

(FAX) (888) 883-2946 or (310) 743-1850

www.courtcall.com

**WE ARE NOW OFFERING ONLINE SERVICES! - VISIT OUR WEBSITE AT
WWW.COURTCALL.COM OR ASK A COURTCALL REPRESENTATIVE FOR MORE INFORMATION**

Schedule new Telephonic Appearances online by registering for this free service. A copy of the registration form can be found on our homepage. Once registration is complete you will be able to:

- * View up to twelve months of past Telephonic Appearances
- * View any future Telephonic Appearances
- * Review payment information for each confirmed Telephonic Appearance
- * Cancel future confirmed Telephonic Appearances
- * Verify and update your profile

There are no registration fees and you will have access to your profile within two business days of our receipt of your completed CourtCall Online Scheduling Registration Form.

ATTENTION EXISTING AND NEW COURTCALL DEBIT ACCOUNT HOLDERS!

All existing CourtCall Debit Account holders can now also register for online accounting. All firms signing up for a new CourtCall Debit Account will automatically be registered for this service. Once registration is complete, firm administrators will be able to:

- * Review and edit Firm Profile information
- * Add funds to the CourtCall Debit Account
- * View and print CourtCall Debit Ledgers containing detailed transaction information, up to twelve months in the past

If you are already using a CourtCall Debit Account and wish to register for our online accounting service, please contact our accounting department at the number listed above.

To open a new CourtCall Debit Account and automatically receive online accounting services, please visit our website at www.courtcall.com and click the FAQ tab and the 'Debit Account' link for more detailed information or ask a CourtCall representative to send you the information via fax or email.

**ONLINE SERVICES ARE OPTIONAL AND YOU MAY STILL CALL OUR CUSTOMER SERVICE
AND ACCOUNTING DEPARTMENTS M-F 5:25AM - 5:25PM PT FOR ASSISTANCE.**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On May 28, 2008, I served the within document(s) described below as:


**PLAINTIFF ROBERT ACHESON'S NOTICE OF INTENT TO APPEAR BY
TELEPHONE FOR PLAINTIFF'S MOTION TO COMPEL DEFENDANT
PRESIDIO INTERNATIONAL, INC.'S FURTHER RESPONSES TO SPECIAL
INTERROGATORIES, SET ONE**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () **PERSONAL:** I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- (X) **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on May 28, 2008, at Los Angeles, California.



Karen Acio

1 Mark Yablonovich (SBN 186670)
Marc Primo (SBN 216796)
2 Mónica Balderrama (SBN 196424)
Rebecca Labat (SBN 221241)
3 Linh Hua (SBN 247419)
4 Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff Robert Acheson

8
9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
behalf of other members of the general public
13 similarly situated,

14 Plaintiff,

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
19 Corporation; and DOES 1 through 10,
inclusive,

20 Defendants.
21

Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**PLAINTIFF ROBERT ACHESON'S
NOTICE OF INTENT TO APPEAR BY
TELEPHONE FOR FURTHER CASE
MANAGEMENT CONFERENCE**

[Via CourtCall Service (888) 447-3470]

Date: June 17, 2008
Time: 10:00 a.m.
Dept.: 5

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** Mónica Balderrama, counsel for Plaintiff Robert
3 Acheson ("Plaintiff"), will appear by telephone on Tuesday, June 17, 2008, at 10:00 a.m. for the
4 Further Case Management Conference in the above-captioned Court, located at 191 N. First Street,
5 San Jose, California 95113.

6 Attached as Exhibit A is a true and correct copy of the CourtCall Confirmation.

7
8 Dated: June 9, 2008

Respectfully submitted,

INITIATIVE LEGAL GROUP, LLP

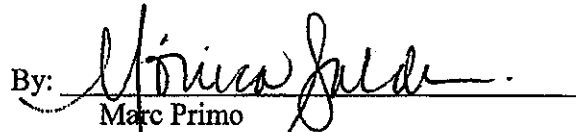
9
10
11 By: 
12 Marc Primo
13 Mónica Balderrama
14 Rebecca Labat
15 Linh Hua
16 Attorneys for Plaintiff Robert Acheson
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EXHIBIT A

Attorney Appearing: Monica Balderrama Initiative Legal Group LLP Tel No: 310-556-5637 Fax No: 310-861-9051 Representing: Plaintiff(s), Acheson <h2 style="text-align: center;">CONFIRMATION</h2>	<h3 style="text-align: center;">Calendar Status</h3> <p>Your CourtCall Appearance has been confirmed for Judge Mary Jo Levinger, Dept. 5 at 10:00 AM on Tuesday, June 17th, 2008</p> <p>At five minutes prior to the above time, dial (800) 447-3470. This call will be operator assisted.</p>
Santa Clara County Superior Court	
Case Name Acheson vs. G.A.L.A. Inc Case Number 107CV099461 Nature of hearing: Case Management Conference CourtCall ID# 2249587 (not access code)	<p>Be prompt, or your case may be heard without you!</p> <p>If you encounter any problems or if the Court has not joined the call within 15 minutes, remain on your teleconference and have a staff member call CourtCall, LLC at (310)342-0888 or 1(888)88 COURT.</p>

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It is counsel's responsibility to notify CourtCall of any continuance or cancelation prior to the scheduled hearing time to have your fee apply to the continued hearing or to be eligible for a refund as the Court will not notify CourtCall of any continuance or cancelation of your matter. Matters continued at the time of the hearing require a new form and a new fee for the continued date. **To continue or cancel your CourtCall Appearance: Call (888) 882-6878 prior to the scheduled appearance time.**

Stop writing checks or tracking credit card charges, open a CourtCall debit account and receive a monthly ledger identifying each CourtCall Appearance. Please call our office for details. Our address is CourtCall LLC, 6383 Arizona Circle, Los Angeles, CA 90045.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On June 9, 2008, I served the within document(s) described below as:


**PLAINTIFF ROBERT ACHESON'S NOTICE OF INTENT TO APPEAR BY
TELEPHONE FOR FURTHER CASE MANAGEMENT CONFERENCE**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

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- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on June 9, 2008, at Los Angeles, California.



Karen Acio

1 INITIATIVE LEGAL GROUP LLP
Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
Mónica Balderrama (SBN 196424)
3 Rebecca Labat (SBN 221241)
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6 Facsimile: (310) 861-9051
1800 Century Park East, 2nd Floor
7 Los Angeles, California 90067
Telephone: (310) 556-5637
8 Facsimile: (310) 861-9051

9 Attorneys for Plaintiff

10 JACKSON LEWIS LLP
JoAnna L. Brooks (SBN 182986)
11 199 Fremont Street, 10th Floor
San Francisco, California 94105
12 Telephone: (415) 394-9400
Facsimile: (415) 394-9401

13 Attorneys for Defendants

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SANTA CLARA**

17 ROBERT ACHESON, individually, and on
18 behalf of other members of the general public
19 similarly situated,

20 Plaintiff,

21 vs.

22 G.A.L.A., INC., a Delaware corporation;
GIORGIO ARMANI CORPORATION, a New
23 York corporation; PRESIDIO
24 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

25 Defendants.
26
27
28

Case No. 107 CV 099461

CLASS ACTION

**STIPULATION AND [PROPOSED]
ORDER TO ALLOW FILING OF
FIRST AMENDED COMPLAINT**

[Assigned to: Hon. Mary Jo Levinger; Dept. 5]

Complaint filed: November 21, 2007

STIPULATION

WHEREAS, on November 21, 2007, Plaintiff Robert Acheson ("Plaintiff") filed a Complaint in the present action in the Superior Court of the County of Santa Clara;

WHEREAS, on January 23, 2008, Plaintiff's Request for Dismissal of Defendants G.A.L.A., Inc. and Giorgio Armani Corporation was entered by the Court clerk;

WHEREAS, on April 29, 2008, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and Defendant Presidio International, Inc. alleging specific violations of the California Labor Code, including facts and theories to support the alleged violations;

WHEREAS, on May 30, 2008, the parties appeared before the Honorable Socrates Manoukian for a hearing on a discovery dispute, and Plaintiff was provided 30 days in which to file a First Amended Complaint;

WHEREAS, on June 10, 2008, the Labor and Workforce Development Agency notified Plaintiff by certified mail that it does not intend to investigate the alleged violations;

WHEREAS, the parties agree that the interests of judicial economy and efficiency are best served by allowing Plaintiff to file the proposed First Amended Complaint without the need for a noticed motion; and

WHEREAS, Plaintiff's proposed First Amended Complaint is attached as Exhibit A reflecting the additional class allegation for Defendant's violation of California Labor Code sections 226.7(a) and 512(a) (denial of meal periods), the additional class allegation for Defendant's violation of California Code of Regulations § 11070 (4)(C) (failure to pay wages for split shifts), and recovery under the Labor Code Private Attorneys General Act of 2004;

BASED ON THE FOREGOING, the parties, through their counsel of record and subject to this Court's approval, hereby STIPULATE AND AGREE as follows:

1. Subject to this Court's approval, Plaintiff may file the attached First Amended Complaint reflecting the additional class allegation for Defendant's violation of California Labor Code sections 226.7(a) and 512(a) (denial of meal periods), the additional class allegation for

1 Defendant's violation of California Code of Regulations § 11070 (4)(C) (failure to pay wages for
2 split shifts), and recovery under the Labor Code Private Attorneys General Act of 2004;

3 2. The First Amended Complaint shall be deemed filed and served upon the date of
4 this Court's order. Defendant will be required to file an answer, other responsive pleading,
5 including Notice of Removal and related papers, to the First Amended Complaint within 15 days
6 after service of the First Amended Complaint.

7
8 IT IS SO STIPULATED.

9
10 Dated: June 21, 2008

Respectfully submitted,

Initiative Legal Group LLP

11
12 

13 Marc Primo
14 Mónica Balderrama
15 Rebecca Labat
16 Linh Hua
Attorneys for Plaintiff Robert Acheson

17 Dated: June 24, 2008

Jackson Lewis LLP

18
19 

20 JoAnna L. Brooks
21 Attorneys for Defendant Presidio International, Inc.

22 **ORDER**

23
24 Good cause appearing, IT IS HEREBY ORDERED.

25
26 Dated: _____, 2008

27 The Honorable Mary Jo Levinger
28 Judge of the Superior Court of California

EXHIBIT A

1 Mark Yablonovich (SBN 186670)
Marc Primo (SBN 216796)
2 Mónica Balderrama (SBN 196424)
Rebecca Labat (SBN 221241)
3 Linh Hua (SBN 247419)
4 Initiative Legal Group LLP
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5 Los Angeles, California 90067
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7 Attorneys for Plaintiff ROBERT ACHESON
8 and Aggrieved Employees

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 ROBERT ACHESON, individually, and on
13 behalf of other members of the general public
similarly situated,

14 Plaintiff,

15 vs.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case Number: 107 CV 099461

**CLASS ACTION and
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACTION**

FIRST AMENDED COMPLAINT

(1) Violation of California Labor Code §§ 510
and 1198 (Unpaid Overtime);

(2) Violation of California Labor Code §§ 201
and 202 (Wages Not Paid Upon Termination);

(3) Violation of California Labor Code § 204
(Failure to Pay Wages);

(4) Violation of California Labor Code
§ 226.7(a) and 512(a) (Denial of Meal Periods);

(5) Violation of California Labor Code
§ 226.7(a) (Denial of Rest Periods);

(6) Violation of California Code of Regulations
§ 11070 (4)(C) (Failure to Pay Wages for Split
Shift);

(7) Violation of California Labor Code § 226(a)
(Improper Wage Statements); and

(8) Violation of California Business & Professions Code §§ 17200, et seq.

Jury Trial Demanded

Plaintiff, individually and on behalf of all other members of the public similarly situated, alleges as follows:

JURISDICTION AND VENUE

1) This class action is brought pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The amount in controversy for each class representative, including claims for compensatory damages and pro rata share of attorneys' fees, is less than \$75,000.

2) This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." The statutes under which this action is brought do not specify any other basis for jurisdiction.

3) This Court has jurisdiction over all Defendants because, upon information and belief, each party is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

4) Venue is proper in this Court because, upon information and belief, one or more of the named Defendants reside, transact business, or have offices in this county and the acts and omissions alleged herein took place in this county.

5) California Labor Code §§ 2699 authorizes employees to sue directly for various civil penalties under the Labor Code.

1 6) Plaintiff has exhausted his administrative remedies by timely requesting and obtaining
2 verification from the California Labor and Workforce Development Agency that it does not intend
3 to investigate any alleged violations.

4 **THE PARTIES**

5 7) Plaintiff ROBERT ACHESON (hereinafter "Acheson" or "Plaintiff") is a resident of Santa
6 Clara County in the State of California.

7 8) Defendant G.A.L.A., INC. was and is, upon information and belief, a Delaware
8 corporation doing business in California, and at all times hereinafter mentioned, an employer
9 whose employees are engaged throughout this county, the State of California, or the various states
10 of the United States of America.

11 9) Defendant GIORGIO ARMANI CORPORATION was and is, upon information and
12 belief, a New York corporation doing business in California, and at all times hereinafter
13 mentioned, an employer whose employees are engaged throughout this county, the State of
14 California, or the various states of the United States of America.

15 10) Defendant PRESIDIO INTERNATIONAL, INC. was and is, upon information and belief,
16 a Delaware corporation doing business in California, and at all times hereinafter mentioned, an
17 employer whose employees are engaged throughout this county, the State of California, or the
18 various states of the United States of America.

19 11) Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
20 fictitious names DOES 1-10, but prays for leave to amend and serve such fictitiously named
21 Defendants pursuant to California Code of Civil Procedure § 474 once their names and capacities
22 become known.

23 12) Plaintiff is informed and believes, and thereon alleges, that DOES 1-10 are the partners,
24 agents, owners, shareholders, managers or employees of G.A.L.A., INC., GIORGIO ARMANI
25 CORPORATION and/or PRESIDIO INTERNATIONAL, INC., and were acting on behalf of
26 G.A.L.A., INC., GIORGIO ARMANI CORPORATION and/or PRESIDIO INTERNATIONAL,
27 INC.

28 13) Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and

1 omissions alleged herein was performed by, or is attributable to G.A.L.A., INC., GIORGIO
2 ARMANI CORPORATION and/or PRESIDIO INTERNATIONAL, INC. and DOES 1-10
3 (collectively "Defendants"), each acting as the agent for the other, with legal authority to act on
4 the other's behalf. The acts of any and all Defendants were in accordance with, and represent the
5 official policy of, Defendants.

6 14) At all times herein mentioned, Defendants, and each of them, ratified each and every act or
7 omission complained of herein. At all times herein mentioned, Defendants, and each of them,
8 aided and abetted the acts and omissions of each and all the other Defendants in proximately
9 causing the damages herein alleged.

10 15) Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in
11 some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
12 occurrences, and transactions alleged herein.

13 **CLASS ACTION ALLEGATIONS**

14 16) Plaintiff brings this action on his own behalf, as well as on behalf of each and all other
15 persons similarly situated, and thus, seeks class certification under California Code of Civil
16 Procedure § 382.

17 17) All claims alleged herein arise under California law for which Plaintiff seeks relief
18 authorized by California law.

19 18) The proposed class is comprised of and defined as:

20 All non-exempt or hourly paid employees who have been employed by Defendants in the
21 State of California within four years prior to the filing of this complaint until resolution of
22 this lawsuit.

23 19) There is a well defined community of interest in the litigation and the class is easily
24 ascertainable:

25 a. Numerosity: The members of the class (and each subclass, if any) are so numerous
26 that joinder of all members would be unfeasible and impractical. The membership of the entire
27 class is unknown to Plaintiff at this time, however, the class is estimated to be greater than one-
28 hundred (100) individuals and the identity of such membership is readily ascertainable by

1 inspection of Defendants' employment records.

2 b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
3 interests of each class member with whom he has a well defined community of interest, and
4 Plaintiff's claims (or defenses, if any) are typical of all class members' as demonstrated herein.

5 c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately, protect the
6 interests of each class member with whom he has a well-defined community of interest and
7 typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to
8 make known to the Court any relationship, conflicts or differences with any class member.
9 Plaintiff's attorneys and the proposed class counsel are versed in the rules governing class action
10 discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this
11 action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily
12 expended for the prosecution of this action for the substantial benefit of each class member.

13 d. Superiority: The nature of this action makes the use of class action adjudication
14 superior to other methods. Class action will achieve economies of time, effort and expense as
15 compared to separate lawsuits, and will avoid inconsistent outcomes because the same issues can
16 be adjudicated in the same manner and at the same time for the entire class.

17 e. Public Policy Considerations: Employers of the state violate employment and labor
18 laws every day. Current employees are often afraid to assert their rights out of fear of direct or
19 indirect retaliation. Former employees are fearful of bringing actions because they believe their
20 former employers may damage their future endeavors through negative references and/or other
21 means. Class actions provide the class members who are not named in the complaint with a type
22 of anonymity that allows for the vindication of their rights at the same time as their privacy is
23 protected.

24 20) There are common questions of law and fact as to the class (and each subclass, if any) that
25 predominate over questions affecting only individual members, including but not limited to:

26 a. Whether Defendants' failure to pay wages, without abatement or reduction, in
27 accordance with the California Labor Code, was willful;

28 b. Whether Defendants required Plaintiff and the other class members to work over

1 eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and
2 failed to pay legally required overtime compensation to Plaintiff and the other class members;

3 c. Whether Defendants failed to promptly pay all wages due to Plaintiff and the other
4 class members upon their discharge or resignation;

5 d. Whether Defendants deprived Plaintiff and the other class members of meal periods
6 or required Plaintiff and the class members to work during meal periods without compensation;

7 e. Whether Defendants deprived Plaintiff and the other class members of rest periods
8 or required Plaintiff and the class members to work during rest periods without compensation;

9 f. Whether Defendants required Plaintiff and the other class members to work split
10 shifts and failed to pay all legally required wages to Plaintiff and other class members for working
11 split shifts;

12 g. Whether Defendants complied with wage reporting as required by the California
13 Labor Code, including but not limited to section 226;

14 h. Whether Defendants' conduct was willful or reckless;

15 i. Whether Defendants engaged in unfair business practices in violation of California
16 Business & Professions Code §§ 17200, et seq.; and

17 j. The appropriate amount of damages, restitution, or monetary penalties resulting
18 from Defendants' violations of California law.

19 **GENERAL ALLEGATIONS**

20 21) At all times set forth, Defendants employed Plaintiff and other persons as non-exempt or
21 hourly paid employees.

22 22) Defendants employed Plaintiff as an "Associate Manager," which is a non-exempt or
23 hourly paid position, from on or about June 2007 to on or about September 2007, at Santa Clara,
24 California business locations.

25 23) Defendants continue to employ non-exempt or hourly paid employees within California.

26 24) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
27 Defendants were advised by skilled lawyers and other professionals, employees and advisors
28 knowledgeable about California labor and wage law, employment and personnel practices, and

1 about the requirements of California law.

2 25) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
3 have known that Plaintiff and other members of the class were entitled to receive certain wages for
4 overtime compensation and that they were not receiving certain wages for overtime compensation.

5 26) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
6 have known that Plaintiff and other class members were entitled to receive all the wages owed to
7 them upon discharge.

8 27) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
9 have known that Plaintiff and other class members were entitled to receive complete and accurate
10 wage statements in accordance with California law.

11 28) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
12 have known that Plaintiff and other class members were entitled to receive all meal periods or
13 payment of one hour of pay at Plaintiff's and class members' regular rate of pay when a meal
14 period was missed.

15 29) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
16 have known that Plaintiff and other class members were entitled to receive all rest periods or
17 payment of one hour of pay at Plaintiff's and class members' regular rate of pay when a rest
18 period was missed.

19 30) Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
20 Defendants knew or should have known that they had a duty to compensate Plaintiff and other
21 members of the class, and that Defendants had the financial ability to pay such compensation, but
22 willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiff and other
23 members of the class that they were properly denied wages, all in order to increase Defendants'
24 profits.

25 31) Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
26 have known that Plaintiff and other class members were entitled to receive one hour's pay at
27 minimum wage when Plaintiff and other class members worked split shifts.

28 32) California Labor Code § 218 states that nothing in Article 1 of the Labor Code shall limit

1 the right of any wage claimant to "sue directly...for any wages or penalty due him [or her] under
2 this article."

3 33) At all times herein set forth, the California Labor Code § 2699 was applicable to Plaintiff's
4 employment by Defendants.

5 34) At all times herein set forth, California Labor Code § 2699, "The Labor Code Private
6 Attorneys General Act" (hereinafter "PAGA"), provides that for any provision of law under the
7 Labor Code that provides for a civil penalty to be assessed and collected by the Labor and
8 Workforce Development Agency for violation of the Labor Code, may, as an alternative, be
9 recovered through a civil action brought by an aggrieved employee on behalf of himself and other
10 current or former employees pursuant to procedures outlines in California Labor Code § 2699.3.

11 35) Pursuant to California Labor Code §2699, a civil action under PAGA may be brought by
12 an "aggrieved employee," who is any person that was employed by the alleged violator and
13 against whom one or more of the alleged violations was committed.

14 36) Plaintiff was employed by the Defendants and the alleged violations were committed
15 against him during his time of employment and is therefore, an aggrieved employee.

16 37) Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved employee,
17 including Plaintiff may as a matter of right amend an existing complaint to add a cause of action
18 arising under Labor Code §2699 only after the following requirements have been met:

- 19 a. The aggrieved employee shall give written notice (hereinafter "Notice") by
20 certified mail to the Labor and Workforce Development Agency (hereinafter
21 "Agency") and the employer of the specific provisions of the Labor Code alleged to
22 have been violated, including the facts and theories to support the alleged violation.
- 23 b. The Agency shall notify the employer and the aggrieved employee by certified mail
24 that it does not intend to investigate the alleged violation within thirty (30) calendar
25 days of the postmark date of the Notice. Upon receipt of the Notice or if no Notice
26 is provided within thirty-three (33) calendar days of the postmark date of the
27 Notice, the aggrieved employee may amend an existing complaint within sixty days
28 of receiving the Notice that the Agency does not intend to investigate the alleged

1 violation, to add a cause of action pursuant to Labor Code §2699 to recover civil
2 penalties in addition to any other penalties that the employee may be entitled to.

3 38) Plaintiff provided written notice by certified mail to the Agency and the Defendant of the
4 specific provisions of the Labor Code alleged to have been violated on April 28, 2008, including
5 the facts and theories to support the alleged violations.

6 39) The Agency notified Defendant and Plaintiff by certified mail on June 10, 2008, that it did
7 not intend to investigate the alleged violation within thirty (30) calendar days of the postmark date
8 of the Notice.

9 40) Plaintiff has, therefore, satisfied the requirements of California Labor Code §2699.3 and
10 may amend his existing complaint and recover civil penalties, in addition to other remedies, for
11 violations of California Labor Code §§ 201, 202, 204, 226(a), 226.7(a), 510, 1198, and 512(a).

12 **FIRST CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 510 and 1198**

14 **(Against all Defendants)**

15 41) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
16 allegations set out in paragraphs 1 through 40.

17 42) California Labor Code § 1198 and the applicable Industrial Welfare Commission ("IWC")
18 Wage Order provide that it is unlawful to employ persons without compensating them at a rate of
19 pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
20 number of hours worked by the person on a daily or weekly basis.

21 43) Specifically, the applicable IWC Wage Order provides that Defendants are and were
22 required to pay Plaintiff and the other class members employed by Defendants, and working more
23 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-
24 one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in
25 a workweek.

26 44) The applicable IWC Wage Order further provides that Defendants are and were required to
27 pay Plaintiff and the other class members employed by Defendants, and working more than twelve
28 (12) hours in a day, overtime compensation at a rate of two times their regular rate of pay.

1 45) California Labor Code § 510 codifies the right to overtime compensation at one-and-one-
2 half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty
3 (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to
4 overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12)
5 hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

6 46) During the relevant time period, Plaintiff and the other class members consistently worked
7 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, or in excess of forty
8 (40) hours in a week.

9 47) During the relevant time period, Defendants willfully failed to pay all overtime wages
10 owed to Plaintiff and the other class members.

11 48) During the relevant time period, Plaintiff and the other class members regularly received
12 incentives in the form of bonuses which were not incorporated in Plaintiff's and the other class-
13 members' overtime compensation.

14 49) Defendants' failure to pay Plaintiff and the other class members the unpaid balance of
15 overtime compensation, as required by California laws, violates the provisions of California Labor
16 Code §§ 510 and 1198, and is therefore unlawful.

17 50) Pursuant to California Labor Code § 1194, Plaintiff and other class members are entitled to
18 recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.
19 Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members, and all
20 aggrieved employees are entitled to recover civil penalties in the amount of one hundred dollars
21 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
22 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus
23 costs and attorney's fees, for violations of the Labor Code §§ 510 and 1198.

24 **SECOND CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 201 and 202**

26 **(Against all Defendants)**

27 51) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
28 allegations set out in paragraphs 1 through 50.

1 52) At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an
2 employer discharges an employee, the wages earned and unpaid at the time of discharge are due
3 and payable immediately, and that if an employee voluntarily leaves his or her employment, his or
4 her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless
5 the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in
6 which case the employee is entitled to his or her wages at the time of quitting.

7 53) During the relevant time period, Defendants willfully failed to pay Plaintiff and the other
8 class members who are no longer employed by Defendants their wages, earned and unpaid, either
9 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

10 54) Defendants' failure to pay Plaintiff and those class members who are no longer employed
11 by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
12 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and
13 202.

14 55) California Labor Code § 203 provides that if an employer willfully fails to pay wages
15 owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a
16 penalty from the due date, and at the same rate until paid or until an action is commenced; but the
17 wages shall not continue for more than thirty (30) days.

18 56) Plaintiff and the other class members are entitled to recover from Defendants the statutory
19 penalty for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day
20 maximum pursuant to California Labor Code § 203.

21 57) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members,
22 and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred
23 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
24 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation,
25 plus costs and attorney's fees, for violations of the Labor Code §§ 201 and 202.

THIRD CAUSE OF ACTION

Violation of California Labor Code § 204

(Against all Defendants)

58) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 57.

59) California Labor Code § 204 provides that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

60) California Labor Code § 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

61) California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

62) During the relevant time period, Defendants willfully failed to pay Plaintiff and the other class members the regular and overtime wages due to them, within any time period permissible by California Labor Code § 204.

63) Plaintiff and the other class members are entitled to recover all statutory penalties and remedies available for violations of California Labor Code § 204.

64) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members, and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of the Labor Code § 204.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7(a) and 512(a)

(Against all Defendants)

65) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in paragraphs 1 through 64.

66) . At all times herein set forth, the California IWC Order and California Labor Code §§ 226.7(a) and 512(a) were applicable to Plaintiff's and the other class members' employment by Defendants.

67) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the California IWC.

68) At all times herein set forth, California Labor Code § 512(a) provides that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

69) At all times herein set forth, California Labor Code § 512(a) further provides that an employer may not require, cause or permit an employee to work for a period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

70) During the relevant time period, Plaintiff and the other members of the class who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without a meal period of not less than thirty (30) minutes.

1 71) During the relevant time period, Plaintiff and the other class members who were scheduled
2 to work for a period of time in excess of six (6) hours were required to work for periods longer
3 than five (5) hours without a meal period of not less than thirty (30) minutes.

4 72) During the relevant time period, Plaintiff and other members of the class who were
5 scheduled to work in excess of ten (10) hours but not longer than twelve (12) hours, and who did
6 not waive their legally-mandated meal periods by mutual consent were required to work in excess
7 of ten (10) hours without receiving a second meal period of not less than thirty (30) minutes.

8 73) During the relevant time period, Defendants required Plaintiff and other members of the
9 class to work during meal periods and failed to compensate Plaintiff and members of the class for
10 work performed during meal periods.

11 74) Defendants' conduct violates applicable IWC Wage Orders, and California Labor Code §§
12 226.7(a) and 512(a).

13 75) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are
14 entitled to recover from Defendants one additional hour of pay at the employee's regular hourly
15 rate of compensation for each work day that the meal period was not provided.

16 76) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members,
17 and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred
18 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
19 hundred dollars (\$200) for each aggrieved employee per pay period 226.7(a) and 512(a).

20 **FIFTH CAUSE OF ACTION**

21 **Violation of California Labor Code § 226.7(a)**

22 **(Against all Defendants)**

23 77) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
24 allegations set out in paragraphs 1 through 76.

25 78) At all times herein set forth, the California IWC Order and California Labor Code §
26 226.7(a) were applicable to Plaintiff's and other class members' employment by Defendants.

27 79) At all times herein set forth, California Labor Code § 226.7(a) provides that no employer
28 shall require an employee to work during any rest period mandated by an applicable order of the

1 California IWC.

2 80) During the relevant time period, Defendants required Plaintiff and other members of the
3 class to work in excess of four (4) hours without providing a ten (10) minute rest period.

4 81) During the relevant time period, Defendants required Plaintiff and other members of the
5 class to work an additional four (4) hours without providing a second ten (10) minute rest period.

6 82) During the relevant time period, Defendants willfully required Plaintiff and other members
7 of the class to work during rest periods and failed to compensate Plaintiff and members of the
8 class for work performed during rest periods.

9 83) Defendants' conduct violates applicable IWC Wage Orders and California Labor Code §
10 226.7(a).

11 84) Pursuant to California Labor Code § 226.7(b), Plaintiff and other members of the class are
12 entitled to recover from Defendants one additional hour of pay at the employees' regular rate of
13 compensation for each work day that the rest period was not provided.

14 85) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class members,
15 and all aggrieved employees are entitled to recover civil penalties in the amount of one hundred
16 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
17 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation,
18 plus costs and attorney's fees, for violations of the Labor Code § 226.7(a).

19 **SIXTH CAUSE OF ACTION**

20 **Violation of California Code of Regulations § 11070 (4)(C)**

21 **(Against all Defendants)**

22 86) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
23 allegations set out in paragraphs 1 through 85.

24 87) Section 4(C) of the California Code of Regulations § 11070 and IWC Wage Order 7-2001
25 provides that "[w]hen an employee works for a split shift, one (1) hour's pay at the minimum
26 wage shall be paid in addition to the minimum wage for that workday, except when the employee
27 resides at the place of employment." Section 2(M) defines "split shift" as a "work schedule,
28 which is interpreted by non-paid working periods established by the employer, other than bona

1 fide rest or meal periods.”

2 88) During the relevant time period, Plaintiff and the other class members did not reside at
3 their place of employment with Defendants.

4 89) During the relevant time period, Defendants have required Plaintiff and other class
5 members to work split shifts. Defendants have failed to pay the required compensation for the
6 split shift in the amount of one hour at the minimum wage for each day that the employee was
7 required to work a split shift.

8 90) Defendants have committed and continue to commit the acts alleged herein knowingly and
9 willfully, with the wrongful and deliberate intention of injuring Plaintiff and the other class
10 members, from improper motives amount to malice, and in conscious disregard of Plaintiff's and
11 other class members' rights.

12 91) Defendants' failure to pay Plaintiff and the other class members wages for working split
13 shifts, as required by California laws, violates Section 4(C) of the California Code of Regulations
14 § 11070 and IWC Wage Order 7-2001, and is therefore unlawful.

15 92) Pursuant to California Labor Code § 1194, Plaintiff and other class members are entitled to
16 recover their unpaid minimum wage compensation, as well as interest, costs, and attorneys' fees.

17 **SEVENTH CAUSE OF ACTION**

18 **Violation of California Labor Code § 226(a)**

19 **(Against all Defendants)**

20 93) Plaintiff incorporates by reference and re-alleges as if fully stated herein the material
21 allegations set out in paragraphs 1 through 92.

22 94) Defendants have intentionally and willfully failed to provide employees with complete and
23 accurate wage statements that fully comply with California Labor Code § 226(a) requirements.

24 95) As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the
25 other class members have suffered injury and damage to their statutorily-protected rights.

26 96) Specifically, Plaintiff and the other class members have been injured by Defendants'
27 intentional violation of California Labor Code § 226(a) because they were denied both their legal
28 right to receive, and their protected interest in receiving, accurate, itemized wage statements under

1 California Labor Code § 226(a).

2 97) Plaintiff and the other class members are entitled to recover from Defendants the greater of
3 their actual damages caused by Defendants' failure to comply with California Labor Code §
4 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

5 98) Plaintiff and the other class members are also entitled to an award of costs and reasonable
6 attorneys' fees pursuant to California Labor Code § 226(e).

7 99) Plaintiff and the other class members are also entitled to injunctive relief to ensure
8 compliance with this section, pursuant to California Labor Code § 226(g).

9 100) Pursuant to California Labor Code § 2699(f) and (g), Plaintiff, the other class
10 members, and all aggrieved employees are entitled to recover civil penalties in the amount of one
11 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
12 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation, plus costs and attorney's fees, for violations of the Labor Code § 226(a).

14 EIGHTH CAUSE OF ACTION

15 Violation of California Business & Professions Code §§ 17200, et seq.

16 (Against all Defendants)

17 101) Plaintiff incorporates by reference and re-alleges as if fully stated herein the
18 material allegations set out in paragraphs 1 through 100.

19 102) Defendants' conduct, as alleged in this complaint, has been, and continues to be,
20 unfair, unlawful, and harmful to the Plaintiff, the other members of the class, and the general
21 public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning
22 of Code of Civil Procedure § 1021.5.

23 103) Defendants' activities as alleged herein are violations of California law, and
24 constitute unlawful business acts and practices in violation of California Business & Professions
25 Code §§ 17200, et seq.

26 104) A violation of California Business & Professions Code §§ 17200, et seq. may be
27 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
28 practice of requiring non-exempt or hourly paid employees, including Plaintiff and class members,

1 to work overtime without paying them proper compensation violates California Labor Code §§
 2 510 and 1198. Additionally, Defendants' policy and practice of requiring non-exempt or hourly
 3 employees, including Plaintiff and class members, to work through their rest periods without
 4 paying them proper compensation violates California Labor Code §§ 226.7(a) and 512(a).
 5 Defendants' policy and practice of failing to pay Plaintiff and those class members who are no
 6 longer employed by Defendants their wages earned and unpaid at the time of discharge, or within
 7 seventy-two hours of their leaving Defendants' employ, is a violation of California Labor Code §§
 8 201 and 202.

9 105) Plaintiff and the putative class members have been personally aggrieved by
 10 Defendants' unlawful business acts and practices alleged herein by the loss of money or property.

11 106) Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and
 12 the putative class members are entitled to restitution of the wages withheld and retained by
 13 Defendants during a period that commences four years prior to the filing of this complaint; a
 14 permanent injunction requiring Defendants to pay all outstanding wages due to class members; an
 15 award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other
 16 applicable laws; and an award of costs.

17 REQUEST FOR JURY TRIAL

18 Plaintiff requests a trial by jury.

19 PRAYER FOR RELIEF

20 Plaintiff, and on behalf of all others similarly situated, prays for relief and judgment
 21 against Defendants, jointly and severally, as follows:

22 Class Certification

- 23 1. That this action be certified as a class action;
- 24 2. That Plaintiff be appointed as the representative of the Class; and
- 25 3. That counsel for Plaintiff be appointed as Class Counsel.

26 As to the First Cause of Action

- 27 1. For general unpaid wages at overtime wage rates and such general and special damages as
 28 may be appropriate;

1 2. For pre-judgment interest on any unpaid overtime compensation commencing from the
2 date such amounts were due;

3 3. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
4 Labor Code § 1194(a);

5 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
6 pursuant to California Labor Code § 2699(f) and (g); and

7 5. For such other and further relief as the Court may deem equitable and appropriate.

8 As to the Second Cause of Action

9 1. For all actual, consequential and incidental losses and damages, according to proof;

10 2. For statutory penalties pursuant to California Labor Code § 203 for Plaintiff and all other
11 class members who have left Defendants' employ;

12 3. For reasonable attorneys' fees and for costs of suit incurred herein;

13 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
14 pursuant to California Labor Code § 2699(f) and (g); and

15 5. For such other and further relief as the Court may deem equitable and appropriate.

16 As to the Third Cause of Action

17 1. For all actual, consequential and incidental losses and damages, according to proof;

18 2. For statutory penalties pursuant to California Labor Code § 204 for Plaintiff and all other
19 class members;

20 3. For pre-judgment interest on any untimely paid compensation, from the date such amounts
21 were due;

22 4. For reasonable attorneys' fees and costs of suit incurred herein;

23 5. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
24 pursuant to California Labor Code § 2699(f) and (g); and

25 6. For such other and further relief as the Court may deem equitable and appropriate.

26 As to the Fourth Cause of Action

27 1. For all actual, consequential, and incidental losses and damages, according to proof;

28 2. For wages pursuant to California Labor Code § 226.7(b);

- 1 3. For reasonable attorneys' fees and costs of suit incurred herein;
- 2 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
- 3 pursuant to California Labor Code § 2699(f) and (g); and
- 4 5. For such other and further relief as the Court may deem appropriate.

5 As to the Fifth Cause of Action

- 6 1. For all actual, consequential, and incidental losses and damages, according to proof;
- 7 2. For wages pursuant to California Labor Code § 226.7(b);
- 8 3. For reasonable attorneys' fees and costs of suit incurred herein;
- 9 4. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
- 10 pursuant to California Labor Code § 2699(f) and (g); and
- 11 5. For such other and further relief as the Court may deem equitable and appropriate.

12 As to the Sixth Cause of Action

- 13 1. For general unpaid wages for working split shifts and such general and special damages as
- 14 may be appropriate;
- 15 2. For pre-judgment interest on any unpaid compensation commencing from the date such
- 16 amounts were due;
- 17 3. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California
- 18 Labor Code § 1194(a); and
- 19 4. For such other and further relief as the Court may deem equitable and appropriate.

20 As to the Seventh Cause of Action

- 21 1. For all actual, consequential and incidental losses and damages, according to proof;
- 22 2. For statutory penalties pursuant to California Labor Code § 226(e);
- 23 3. For injunctive relief to ensure compliance with this section, pursuant to California Labor
- 24 Code § 226(g);
- 25 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California
- 26 Labor Code § 226(e);
- 27 5. For all civil penalties and reasonable attorney's fees and cost of suit incurred herein
- 28 pursuant to California Labor Code § 2699(f) and (g); and

6. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

1. For restitution of unpaid wages to all class members and prejudgment interest from the day such amounts were due and payable;

2. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 et seq.;

3. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;


4. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, et seq.; and

5. For such other and further relief as the Court may deem equitable and appropriate.

Dated: June 27, 2008

Respectfully submitted,

Initiative Legal Group LLP

By: 
Mark Yablonovich
Marc Primo
Mónica Balderrama
Rebecca Labat
Linh Hua
Attorneys for Plaintiff and Aggrieved
Employees

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On June 27, 2008, I served the within document(s) described below as:

**STIPULATION AND [PROPOSED] ORDER TO ALLOW FILING OF
FIRST AMENDED COMPLAINT**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () **PERSONAL:** I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- () **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- (X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on June 27, 2008, at Los Angeles, California.



Karen Acio

1 Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
3 Mónica Balderrama (SBN 196424)
4 Shawn Westrick (SBN 235313)
5 Linh Hua (SBN 247419)
6 Initiative Legal Group LLP
7 1800 Century Park East, 2nd Floor
8 Los Angeles, California 90067
9 Telephone: (310) 556-5637
10 Facsimile: (310) 861-9051

11 Attorneys for Plaintiff Robert Acheson

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ROBERT ACHESON, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

G.A.L.A., INC., a Delaware corporation;
GIORGIO ARMANI CORPORATION, a
New York corporation; PRESIDIO
INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**NOTICE OF FURTHER CASE
MANAGEMENT CONFERENCE**

Complaint filed: November 21, 2007

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** the Court in the above-referenced matter located at
3 191 N. First Street, San Jose, California 95113, set a **Further Case Management Conference for**
4 **August 19, 2008 at 10:00 a.m. in Department 5.**

5 Attached hereto as Exhibit A is a true and correct copy of the original notice.

6
7 Dated: June 30, 2008

Respectfully submitted,

8 Initiative Legal Group LLP

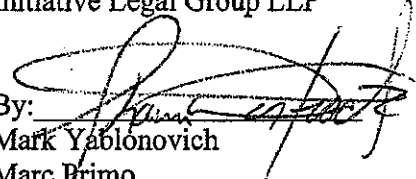
9
10 By: 
11 Mark Yablonovich
12 Marc Primo
13 Mónica Balderrama
14 Shawn Westrick
15 Linh Hua
16 Attorneys for Plaintiff Robert Acheson

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

TO: Mark Yablonovich
Initiative Legal Group LLP
1800 Century Park East 2nd Floor
Los Angeles, CA 90067

RE: Acheson Vs G.A.L.A.
Case Nbr: 1-07-CV-099461

NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE

A further Case Management Conference has been scheduled for the above entitled case, and you are directed to appear in court on:

Date: 08/19/08 At: 1000AM in: Dept 5

Superior Court, 191 North First St., San Jose, CA 95113

For further information, contact the Calendar Office at (408)882-2100.

Parties/Attorneys of Record:

CC: Joanna L. Brooks , Jackson Lewis, LLP
199 Fremont Street, 10th Floor, San Francisco, CA 94105

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 06-24-08. KIRI TORRE, Chief Executive Officer/Clerk by Lisa Wilson, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. First Street
San Jose, CA 95113-1090

TO: Mark Yablonovich
Initiative Legal Group LLP
1800 Century Park East 2nd Floor
Los Angeles, CA 90067

RE: Acheson Vs G.A.L.A.
Case Nbr: 1-07-CV-099461

NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE

A further Case Management Conference has been scheduled for the above entitled case, and you are directed to appear in court on:

Date: 08/19/08 At: 1000AM in: Dept 5

Superior Court, 191 North First St., San Jose, CA 95113

For further information, contact the Calendar Office at (408)882-2100.

Parties/Attorneys of Record:

CC: Presidio International, Inc.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408)882-2700, or use the Court's TDD line, (408)882-2690 or the Voice/TDD California Relay Service, (800)735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown above, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on 06-24-08. KIRI TORRE, Chief Executive Officer/Clerk by Lisa Wilson, Deputy

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On June 30, 2008, I served the within document(s) described below as:

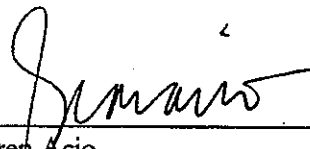
NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Joanna L. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- ☒ **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- ☐ **PERSONAL:** I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- ☐ **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- ☐ **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on June 30, 2008, at Los Angeles, California.



Karen Acio

PROOF OF SERVICE



INITIATIVE LEGAL GROUP LLP

Via Facsimile

To: Joanna L. Brooks
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

From: Karen Acio
Legal Assistant to
Monica Balderrama, Esq.
Shawn Westrick, Esq.
Linh Hua, Esq.
310.556.5637 main
310.861.9051 facsimile

Date: July 9, 2008

Subject: Acheson v. G.A.L.A. et al. (Case No. 107 CV 099461)

Total Pages: 6 (including cover)

**PLAINTIFF ROBERT ACHESON'S NOTICE OF INTENT TO APPEAR BY
TELEPHONE FOR CONTINUED HEARING ON MOTION TO COMPEL
SPECIAL INTERROGATORIES, SET 1**

1 Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
3 Mónica Balderrama (SBN 196424)
4 Rebecca Labat (SBN 221241)
5 Linh Hua (SBN 247419)
6 Initiative Legal Group LLP
7 1800 Century Park East, 2nd Floor
8 Los Angeles, California 90067
9 Telephone: (310) 556-5637
10 Facsimile: (310) 861-9051

11 Attorneys for Plaintiff Robert Acheson

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SANTA CLARA**

14 ROBERT ACHESON, individually, and on
15 behalf of other members of the general public
16 similarly situated,

17 Plaintiff,

18 vs.

19 G.A.L.A., INC., a Delaware corporation;
20 GIORGIO ARMANI CORPORATION, a
21 New York corporation; PRESIDIO
22 INTERNATIONAL, INC., a Delaware
23 Corporation; and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case Number: 107 CV 099461

CLASS ACTION

[Assigned to Hon. Mary Jo Levinger;
Department 5]

**PLAINTIFF ROBERT ACHESON'S
NOTICE OF INTENT TO APPEAR BY
TELEPHONE FOR CONTINUED
HEARING ON MOTION TO COMPEL
SPECIAL INTERROGATORIES, SET 1**

[Via CourtCall Service (888) 447-3470]

Date: July 11, 2008

Time: 10:00 a.m.

Dept.: 7

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT Mónica Balderrama, counsel for Plaintiff Robert
3 Acheson ("Plaintiff"), will appear by telephone on Friday, July 11, 2008, at 10:00 a.m. for the
4 Continued Hearing on Motion to Compel Special Interrogatories, Set 1 in the above-captioned
5 Court, located at 191 N. First Street, San Jose, California 95113.

6 Attached as Exhibit A is a true and correct copy of the CourtCall Confirmation.

7
8 Dated: July 9, 2008

Respectfully submitted,

INITIATIVE LEGAL GROUP, LLP


9
10
11 By: 
12 Marc Primo
13 Mónica Balderrama
14 Shawn Westrick
15 Linh Hua
16 Attorneys for Plaintiff Robert Acheson
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EXHIBIT "A"

Attorney Appearing: Monica Balderrama Initiative Legal Group LLP Tel No: 310-556-5637 Fax No: 310-861-9051 Representing: Plaintiff(s), Acheson		Calendar Status Your CourtCall Appearance has been confirmed for Judge Socrates Manoukian, Dept. 7 at 10:00 AM on Friday, July 11th, 2008 At five minutes prior to the above time, dial (800) 447-3470. This call will be operator assisted.
<h1>CONFIRMATION</h1>		
Santa Clara County Superior Court		
Case Name Acheson vs. G.A.L.A. Inc Case Number 107CV099461 Nature of hearing: Motion CourtCall ID# 2290165 (not access code)	Be prompt, or your case may be heard without you! If you encounter any problems or if the Court has not joined the call within 15 minutes, remain on your teleconference and have a staff member call CourtCall, LLC at (310)342-0888 or 1(888)88 COURT.	

Mandatory Instructions For Making A CourtCall® Appearance

1. IT IS COUNSEL'S RESPONSIBILITY TO DIAL INTO THE CONFERENCE AT LEAST FIVE MINUTES PRIOR TO THE SCHEDULED APPEARANCE TIME. COURTCALL DOES NOT CALL COUNSEL! If you are unavoidably late and the Court is already in session, you must wait for an appropriate moment to announce yourself. Do not interrupt the Judge.

NEVER PLACE THE CONFERENCE ON HOLD. CELLULAR AND PAYPHONES ARE STRICTLY PROHIBITED.

2. When speaking with the Court, always talk directly into the handset and state your name clearly each time you speak. **DO NOT USE YOUR SPEAKERPHONE** as it may compromise the quality of the call for ALL participants, including the Court.
3. When you place your call, you must be in a **QUIET AREA**. Give the Court your absolute undivided attention. All background noise must be eliminated (i.e. cell phones, pagers, intercoms, typing, paper shuffling, dogs barking, babies crying, etc.) Your attention must be focused solely on the Court and you should refrain from making any unnecessary noise or engaging in conversations with others. Disruptions on the conference line will not be tolerated by the Court.
4. Once you have dialed into the conference you may be checked in by an operator or a clerk, alternatively, you may not be addressed until the Court calls your specific case. Listen carefully to the Court proceedings as the Court may make general observations applicable to all matters which will not be repeated.
- *** The Court expects you to act professionally and failure to adhere to these instructions may result in the termination of your call or the entire conference, sanctions for a non-appearance or an order for counsel to appear in Court at the next session or such other consequences the Court deems appropriate, as well as withdrawing the privilege of appearing telephonically in the future. *****
- It is counsel's responsibility to notify CourtCall of any continuance or cancelation prior to the scheduled hearing time to have your fee apply to the continued hearing or to be eligible for a refund as the Court will not notify CourtCall of any continuance or cancelation of your matter. Matters continued at the time of the hearing require a new form and a new fee for the continued date. **To continue or cancel your CourtCall Appearance: Call (888) 882-6878 prior to the scheduled appearance time.**
- Stop writing checks or tracking credit card charges, open a CourtCall debit account and receive a monthly ledger identifying each CourtCall Appearance. Please call our office for details. Our address is CourtCall LLC, 6383 Arizona Circle, Los Angeles, CA 90045.**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Initiative Legal Group LLP, 1800 Century Park East, 2nd Floor, Los Angeles, California 90067.

On July 9, 2008, I served the within document(s) described below as:


**PLAINTIFF ROBERT ACHESON'S NOTICE OF INTENT TO APPEAR BY
TELEPHONE FOR CONTINUED HEARING ON MOTION TO COMPEL
SPECIAL INTERROGATORIES, SET 1**

on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes addressed as follows:

Joanna J. Brooks
Timothy C. Travelstead
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
415.394.9401 facsimile

- (X) MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid.
- () PERSONAL: I caused such envelope to be handed delivered by a hand to the individuals at the addresses listed.
- () OVERNIGHT COURIER: I caused the above-referenced document(s) to be delivered to an overnight courier service (Federal Express), for delivery to the above addressee(s).
- () FACSIMILE: I caused the above-referenced document(s) to be transmitted to the above-named person at the telephone numbers above.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED this document on July 9, 2008, at Los Angeles, California.



Karen Acio

PROOF OF SERVICE

1 JOANNA L. BROOKS (SBN 182986)
 2 TIMOTHY C. TRAVELSTEAD (SBN 215260)
 3 PUNAM SARAD (SBN 217091)
 JACKSON LEWIS LLP
 199 Fremont Street, 10th Floor
 San Francisco, CA 94105
 Telephone 415.394.9400
 Facsimile: 415.394.9401

Attorneys for Defendant
 PRESIDIO INTERNATIONAL, INC.

ENFORSE

2008 JUL -9 A 10:11

Deputy Clerk, Superior Court of California
 County of Santa Clara

By: M. Rosales

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SANTA CLARA

ROBERT ACHESON, individually, and on
 behalf of other members of the general public
 similarly situated,

Plaintiff,

v.

G.A.L.A., INC., a Delaware corporation;
 GIORGIO ARMANI CORPORATION, a New
 York corporation; PRESIDIO
 INTERNATIONAL, INC., a Delaware
 Corporation; and DOES 1 through 10, inclusive,
 Defendants.

Case No. 107 CV 099461

**DEFENDANT PRESIDIO
 INTERNATIONAL, INC.'S ANSWER
 TO PLAINTIFF'S FIRST AMENDED
 UNVERIFIED CLASS ACTION
 COMPLAINT**

BY FAX

Complaint Filed: November 21, 2007
 FAC Filed: June 30, 2008
 Trial Date: None Set

Defendant Presidio International, Inc. ("Defendant") hereby answers Plaintiff Robert
 Acheson's ("Plaintiff") First Amended Unverified Class Action Complaint (the "Complaint").

GENERAL DENIAL

Pursuant to Code of Civil Procedure section 431.30 subdivision (d), Defendant denies
 each and every allegation contained in the Complaint and denies that Plaintiff was injured or
 damaged as alleged, or at all.

///

///

1 **AFFIRMATIVE DEFENSES**

2 By way of affirmative defenses to the allegations of the Complaint herein, Defendant
3 alleges as follows:

4 **First Affirmative Defense**
5 (Failure to State a Claim)

6 The Complaint, and all causes of action contained therein, fail to state facts sufficient to
7 constitute a cause of action against Defendant.

8 **Second Affirmative Defense**
9 (Failure to Mitigate Damages)

10 Plaintiff is barred from recovering any damages for lost wages, or any recovery for lost
11 wages must be reduced, if and to the extent that Plaintiff failed to exercise reasonable diligence to
12 mitigate his alleged damages, if any.

13 **Third Affirmative Defense**
14 (Unclean Hands)

15 Plaintiff is barred from recovery under this Complaint if and to the extent that he comes to
16 this Court with unclean hands.

17 **Fourth Affirmative Defense**
18 (Adequate Legal Remedies)

19 The Complaint's Eighth Cause of Action for equitable relief is barred in whole or in part
20 to the extent Plaintiff has an adequate remedy at law.

21 **Fifth Affirmative Defense**
22 (Statute of Limitations)

23 The Complaint's First, Second, Third, Fourth, Fifth, Sixth and Seventh causes of action
24 are barred in whole or in part by the applicable statutes of limitations, including without
25 limitation Code of Civil Procedure section 338 subdivision (a) or Code of Civil Procedure section
26 340 subdivisions (a) and (b), to the extent the claims exceed the three-year limitations period.

27 **Sixth Affirmative Defense**
28 (Statute of Limitations)

The Complaint's Eighth Cause of Action is barred in whole or in part by the applicable
statute of limitations, including without limitation Business and Professions Code section 17208,
to the extent the claims exceed the four-year limitations period.

Seventh Affirmative Defense
(Lack of Standing)

The Complaint, and all causes of action contained therein, are barred to the extent Plaintiff lacks standing to bring the instant action on behalf of himself or other unnamed putative class members.

Eighth Affirmative Defense
(Waiver)

The Complaint, and all causes of action contained therein, are barred by the doctrine of waiver.

Ninth Affirmative Defense
(Good Faith)

To the extent Plaintiff seeks statutory penalties, such penalty must be barred or reduced to the extent Defendant acted in good faith and non-willfully.

Tenth Affirmative Defense
(Estoppel)

Defendant alleges, on information and belief, that the Complaint, and all causes of action contained therein, are barred by the doctrine of estoppel.

Eleventh Affirmative Defense
(Laches)

Defendant alleges, on information and belief, that the Complaint, and all causes of action contained therein, are barred by the doctrine of laches.

Twelfth Affirmative Defense
(Compliance)

Any recovery on Plaintiff's Complaint with respect to the allegations of failure to pay wages owed or overtime is barred because Defendant complied with all applicable provisions of the California Labor Code, the applicable wage orders of the California Industrial Welfare Commission, and federal law.

Thirteenth Affirmative Defense
(Waiver of Meal and Rest Periods)

Plaintiff's First cause of action for unpaid wages is barred to the extent Plaintiff seeks wages for unpaid meal and rest periods that Defendant provided but that Plaintiff refused to take

1 in compliance with Defendant's policies and/or or voluntarily waived.

2 WHEREFORE, Defendant prays for judgment as follows:

3 1. That Plaintiff take nothing by his Complaint;

4 2. That the Complaint and each claim for relief be dismissed in its entirety with
5 prejudice;

6 3. That Plaintiff be denied each and every demand and prayer for relief contained in
7 the Complaint;

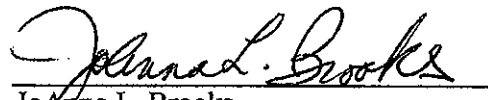
8 4. For costs of suit incurred herein, including reasonable attorney's fees, as and
9 where permitted under California law; and

10 5. For such other and further relief as the Court deems just and equitable.

11
12 Dated: July 9, 2008

JACKSON LEWIS LLP

13
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15 By:


Joanna L. Brooks
Timothy C. Travelstead
Punam Sarad
Attorneys for Defendant
PRESIDIO INTERNATIONAL, INC.

PROOF OF SERVICE

I, Mary Stoner, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On July 9, 2008, I served the attached document(s):

**DEFENDANT PRESIDIO INTERNATIONAL, INC.'S
ANSWER TO PLAINTIFF'S FIRST AMENDED
UNVERIFIED CLASS ACTION COMPLAINT**

in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Mark Yablonovich, Esq.
Marc Primo, Esq.
Robert Byrnes, Esq.
Initiative Legal Group LLP
1800 Century Park East, 2nd Floor
Los Angeles, CA 90067
Telephone: 310.556.5637
Facsimile: 301.861.9051

☒ **BY MAIL:** United States Postal Service - by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

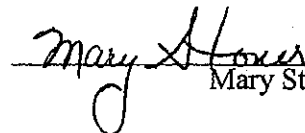
☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by Messenger Service to the above address.

☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above address within 24 hours by OVERNIGHT EXPRESS service.

☒ **BY FACSIMILE:** I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 9, 2008 at San Francisco, California.


Mary Stoner

1 JOANNA L. BROOKS (SBN 182986)
2 TIMOTHY C. TRAVELSTEAD (SBN 215260)
3 JACKSON LEWIS LLP
4 199 Fremont Street, 10th Floor
San Francisco, CA 94105
Telephone 415.394.9400
Facsimile: 415.394.9401

5 Attorneys for Defendant
6 PRESIDIO INTERNATIONAL, INC.

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11

12 ROBERT ACHESON, individually, and on
13 behalf of other members of the general public
similarly situated,

14 Plaintiff,

15 v.

16 G.A.L.A., INC., a Delaware corporation;
17 GIORGIO ARMANI CORPORATION, a New
York corporation; PRESIDIO
18 INTERNATIONAL, INC., a Delaware
Corporation; and DOES 1 through 10, inclusive,

19 Defendants.
20

Case No. 107 CV 099461

**NOTICE TO ADVERSE PARTY OF
REMOVAL OF ACTION TO
FEDERAL COURT**

Complaint filed: November 21, 2007

21
22 TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE CITY
23 AND COUNTY OF SANTA CLARA, AND TO PLAINTIFF ROBERT ACHESON AND HIS
24 ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on July 10, 2008, Defendant Presidio International, Inc.
26 ("PRESIDIO") filed a Notice of Removal of this action in the United States District Court for the
27 Northern District of California. A true and correct copy of Defendant's Notice of Removal is
28 attached hereto as Exhibit 1.

1 Pursuant to 28 U.S.C. Section 1332 and Section 1441(b), the filing of the attached Notice
2 of Removal with the United States District Court effects the removal of this action and the above-
3 captioned court may proceed no further unless and until the case is remanded by the federal court.
4

5 Dated: July 10, 2008

JACKSON LEWIS LLP

7
8 By: _____

JoAnna L. Brooks
Timothy C. Travelstead
Attorneys for Defendant
PRESIDIO INTERNATIONAL, INC.
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